140-599

140-599

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1218.

THE UNITED STATES, APPELLANT,

vs.

THE DALLES MILITARY ROAD COMPANY, JAMES K. KELLY, C. N. THORNBURY, ELEANOR MARTIN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED JULY 14, 1890.

	Original.	Print.
Subpœna	57	44
Appearance for certain defendants	59	45
Exceptions to bill	61	45
Appearance for defendants	63	46
Petition for leave to file double pleas	65	46
Answer of Edward Martin	68	47
Appearance for certain defendants	71	48
Order granting leave to file double pleas and sustaining exceptions	73	48
Opinion of Judge Sawyer on exceptions	75	49
Answer of Margaret A. Martin	96	55
Plea of D. V. B. Henarie *et al*	99	56
Answer of D. V. B. Henarie *et al*	108	60
Order granting leave to amend pleas	120	65
Answer of The Dalles Military Road Company *et al*	122	66
Decree	139	74
Opinion of Judge Sawyer	141	74
Order allowing appeal	145	82
Clerk's certificate	146	82

1 UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 27th day of June, 1890, at Portland, Multnomah County, Oregon, in said district, I duly served the within citation on appeal upon the therein-named defendants, The Dalles Military Road Company, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and The Eastern Oregon Land Company, by delivering at the office of James K. Kelley, in Portland, Oregon, to A. L. Frazier, in person, a true copy of said citation on appeal, duly certified to by me as U. S. marshal, said James K. Kelley being the attorney of record of each of said defendants, and being a resident of the State of Oregon, but was absent from his said office at said time, and said A. L. Frazier being at said time the only person in and the person having charge of the said office.

L. T. BARIN,
U. S. Marshal.
By M. B. GOLDSTEIN,
Deputy.

1½ UNITED STATES OF AMERICA,
District of Oregon, ss:

To the Dalles Military Road Company, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and The Eastern Oregon Land Company, greeting:

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon in your favor and has given the security required by law, you are, therefore, hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. eighteen hundred and ninety, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this June 4, 1890.
DEADY, *J.*

Filed June 27, 1890. R. H. Lamson, clerk.

(Indorsed:) Circuit court of the U. S. United States vs. The Dalles Military Wagon Road Co. Notice of appeal and citation to appear.

2 UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 27th day of June, 1890, at Portland, Multnomah County, Oregon, in said district, I duly served the within citation on appeal upon the therein-named defendants, The Dalles Military Road Company, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Mar-

tin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and The Eastern Oregon Land Company, by delivering at the office of James K. Kelly, in Portland, Oregon, to A. L. Frazer in person, a true copy of said citation on appeal, duly certified to by me as U. S. marshal, said James K. Kelly being the attorney of record of each of said defendants and being a resident of the State of Oregon, but was absent from his said office at said time, and said A. L. Frazer being at said time the only person in and the person having charge of the said office.

L. T. BARIN,
U. S. Marshal.
By M. B. GOLDSTEIN,
Dept.

2½ UNITED STATES OF AMERICA,
District of Oregon, ss:

To the Dalles Military Road Company, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, greeting:

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon in your favor and has given the security required by law, you are, therefore, hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. eighteen hundred and ninety, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this June 4, 1890.
(Signed) DEADY, *J.*

(Indorsed:) Filed June 27, 1890, R. H. Lamson, clerk.

3 In the circuit court of the United States for the district of Oregon, April term, 1889.

Be it remembered that on the 29th day of August, 1889, there was duly filed in the circuit court of the United States for the district of Oregon a bill of complaint, in words and figures as follows, to wit:

4 In the circuit court of the United States for the district of Oregon.

To the honorable the judges of the circuit court of the United States for the district of Oregon:

Comes now your orator, W. H. H. Miller, the Attorney-General of the United States of America, and in virtue of the provisions of an act of the Congress of the United States entitled "An act providing in certain cases for the forfeiture of wagon-road grants in the State of Oregon," approved March 2, 1889, exhibits and presents this bill of complaint in behalf of the United States and against The Dalles Military Road Company, James K.

Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker and The Eastern Oregon Land Company, defendants.

5 I. And thereupon your orator shows to your honors that on the 25th day of February, A. D. 1867, the Congress of the United States passed, and the President duly approved, an act granting to the State of Oregon to aid in the construction of a wagon road from Dalles City, on the Columbia River, by way of Camp Watson, Canyon City, Mormon or Humboldt Basin, to a point on Snake River, opposite Fort Boise, in Idaho Territory, the alternate sections of public land, designated by odd numbers, to the extent of three sections on each side of said road; that said act provided that the lands granted should be exclusively applied to the construction of the road and to no other purpose; that they should be disposed of only as fast as the work upon the road progressed; that lands lying within the limit fixed by said act, and theretofore reserved or appropriated, should be reserved from the operation of said act, except so far as it might be necessary to locate the road over the same, in which case a right of way to the width of one hundred feet was granted; that the said act further provided that the grant should not embrace mineral lands of the United States; that the land granted thereby to the State of Oregon should be disposed of by the legislature thereof for the uses and purposes therein set forth, and for no other purposes; that the road should be and remain a public highway for the use of the United States, free from toll or other charges upon the transportation of any property, troops, or mails of the United States, and also that the road should be constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon might prescribe; that the said act also authorized the State of Oregon to locate and use in the construction of said road an additional amount of the public lands, not previously reserved to the United States nor otherwise disposed of, and not exceeding ten miles in distance from the general route of the road, and equal to the amount reserved from the operation of the act, said lieu lands to be selected in alternate odd sections, as provided therein; that said act further provided that the lands thereby granted to the State of Oregon should be disposed of only in the following manner, that is to say: When the governor of the State should certify to the Secretary of the Interior that ten cotermin'us miles of said road were completed, then a quantity of land granted by the act, not exceeding thirty sections, might be sold, and so on from time to time until said road should be completed, and if the road was not completed within five years, no further sales should be made, and the lands remaining unsold should revert to the United States, and also that the surveyor-general of the district of Oregon should cause the lands granted by the act to be surveyed at the earliest practicable period after the said State should have enacted the necessary legislation to carry the said act of Congress into effect.

II. And your orator further shows to your honors that on the 20th day of October, A. D. 1868, the legislative assembly of the State of Oregon passed, and the governor approved, an act entitled "An act dedicating certain lands to Dalles Military Road Company," which act, after setting forth the act of Congress aforesaid, granted to Dalles Military Road Com-

pany all lands, rights of way, rights, privileges, and immunities granted or pledged to the State of Oregon, by said act of Congress aforesaid, for the purpose of aiding said Dalles Military Road Company in constructing the road mentioned and described in said act of Congress aforesaid, and upon the conditions and immunities therein prescribed; and further, that the said act of the said legislative assembly granted and pledged to the said Dalles Military Road Company all moneys, lands, rights, privileges, and immunities which might thereafter be granted to the State of Oregon to aid in the construction of said road, for the purposes and upon the conditions mentioned in said act of Congress, or which might be mentioned in any further grant of money or land to aid in constructing said road; and said act of the legislative assembly of the State of Oregon authorized
6 the said Dalles Military Road Company to locate, subject to the approval of the governor of the State of Oregon, the land within the ten-mile limit prescribed by said act of Congress aforesaid, in lieu of lands reserved to, or disposed of by, the United States, and lying and being within the limits of the grant as described in the first section of the act of Congress aforesaid.

III. And your orator further shows to your honors that the State of Oregon never at any time passed any laws whatsoever for the special purpose of carrying the act of Congress aforesaid into effect, but long before the passage and approval of said act of Congress and on the 14th day of October, A. D. 1862, the legislative assembly of the State of Oregon passed an act entitled "An act providing for private incorporations and the appropriation of private property therefor," which was approved, by the governor of Oregon on said day last aforesaid, which act provided, among other things, that any road, other than a railway, constructed by a corporation formed under the said law, should be cleared of standing timber for thirty feet in width, that said road should have a track in the center not less than sixteen feet in width finished and kept in good traveling condition, except when the cut of said road is six feet or more deep on either side, in which case said road need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of said narrow track. And said act of the legislative assembly of Oregon last aforesaid also provided that all streams or other waters upon the line of such roads should be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other water, or if such stream or other water form the boundary between two counties, then the county court of either of said counties might authorize the corporation to place a ferry-boat upon such stream or other water, to be kept and run for such toll as the county court might prescribe, and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court might authorize such corporation to connect their road with a ferry, at the date of said act or thereafter established over such stream or other water under the general statutes in relation to ferries, and that said provisions of said act of the legislative assembly of the State of Oregon last aforesaid have been in force at all times since the 14th day of October, 1862, and still remain in force.

IV. And your orator further shows to your honors that the Dalles Military Road Company is a private corporation purporting to have been incorporated on the 30th day of March, A. D. 1868, under and by virtue of

the general laws of the State of Oregon providing for private incorporations and the appropriation of private property therefor. That the enterprise and business in which the said corporation proposed to engage was the location and construction of a clay road from Dalles City, in the county of Wasco, Oregon, by way of Camp Watson and Canyon City, to a point on Snake River opposite Fort Boise, in Idaho Territory, about two miles below the mouth of Owyhee River. That James K. Kelly, N. H. Gates, and Orlando Humason were the incorporators thereof.

That on the 11th day of January, A. D. 1871, the Dalles Military Wagon Road Company, by Orlando Humason, Victor Trevitt, O. S. Savage, O. W. Weaver, and B. W. Mitchell, the then directors thereof, in pursuance of the unanimous vote of the stockholders thereof, made and filed supplementary articles of incorporation; that said supplementary articles of incorporation contained but one article, which is as follows:

"The enterprise and business in which the said corporation proposes to engage, in addition to the location and construction of a clay road as provided in the original articles of incorporation, is to accept and receive any and all grants of land and other things of value from the United
7 States and the State of Oregon, and to sell and convey, and to purchase, and to hold land and other property which the directors of said corporation may deem necessary and convenient for the interests thereof; and to engage in any business incident to and connected with receiving any such grant, and in selling, conveying, purchasing, and holding any land or property that may come into the possession of said company, also to establish and keep a toll road on any part of the road belonging to said company."

That said private corporation is still in being, and that the officers thereof are James K. Kelly, president, and C. N. Thornbury, secretary.

V. And your orator further shows to your honors that on the first day of January, A. D. 1869, and on divers other day between said day and the 23d day of June, 1869, the officers, stockholders, and agents of the Dalles Military Road Company and other persons acting in their interest and in the interest of said company, falsely and fraudulently represented to George L. Woods, then the governor of Oregon, that said road had been constructed as by law required; they, the said officers, stockholders, agents, and representatives, and other persons aforesaid, then and there well knowing that said representations were false, and that the said road had not been constructed in any respect according to law or at all; that they and each of them made the said false and fraudulent representation for the sole and only purpose of fraudulently procuring from the said George L. Woods, as governor of the State of Oregon, a certificate declaring that the said road had been constructed in accordance with the act of Congress aforesaid approved February 25, 1867, and of the act of the legislative assembly aforesaid approved February 20, A. D. 1868.

That the said George L. Woods, then governor of Oregon, in consequence of said false and fraudulent representations made as aforesaid by the persons aforesaid, made and issued the following certificate:

EXECUTIVE OFFICE,
Salem, Oregon, June 23, 1869.

I, George L. Woods, governor of the State of Oregon, do hereby certify that this plat or map of The Dalles Military Road has been duly filed in

my office by the Dalles Military Road Company, and shows, in connection with the public surveys, as far as said public surveys are completed, the location of the line of route as actually surveyed, and upon which their road is constructed in accordance with the requirements of an act of Congress approved February 25, 1867, entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon-road from Dalles City, on the Columbia River, to Fort Boisé, on Snake River," and with the act of the legislative assembly of the State of Oregon approved October 20, 1868, entitled "An act donating certain lands to Dalles Military Road Company." I further certify that I have made a careful examination of said road since its completion, and that the same is built in all respects as required by the said above-recited acts, and that said road is accepted.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Oregon.

Done at Salem, Oregon, June 23, 1869.

GEO. L. WOODS.

Attest:
[SEAL.]

SAMUEL E. MAY,
Secretary of State.

8 VI. And your orator further shows to your honors that it was not and is not true that the Dalles Military Road Company had at any time whatsoever constructed, or caused to be constructed, a road upon any line of route located or surveyed by said company or by any other corporation, person or persons, anywhere within the limits of the grant of land provided for in the act of Congress aforesaid, or at all, and this the said George L. Woods, governor aforesaid, then and there well knew, and that it was not and is not true that the said governor made a careful, or any, examination of any road constructed or owned by the Dalles Military Road Company.

VII. And your orator further shows to your honors that said certificate was procured by the said Dalles Military Road Company by and through the false and fraudulent representations aforesaid by the officers, stockholders, agents, and persons aforesaid in order to enable it falsely and fraudulently to obtain possession and control of the lands lying within the limits of the grant of land provided for in the act of Congress aforesaid, and that the acceptance of said pretended road by the governor aforesaid was a fraud upon the United States of America.

VIII. And your orator further shows to your honors that the said road never was built, graded, bridged, cleared, or constructed either in whole or in part so as to be a public highway, or so as to permit of the transportation of any property, troops, or mails of the United States over the same, and was not and never has been maintained as a public highway by either or any of the defendants herein, or any person or persons claiming any interest in the lands embraced within the limits provided for by the said act of Congress.

IX. And your orator further shows to your honors that notwithstanding the provisions of the act of Congress declaring that the lands granted thereby should be exclusively applied to the construction of the

road and to no other purpose, neither the said lands, nor the proceeds thereof, have ever been exclusively or at all applied to the construction of the road, or any part thereof, or to the construction of any bridges thereon, or to the establishment of any ferries on any streams along the line of the road or any part thereof.

X. And your orator further shows to your honors that the lands granted by the said act of Congress were not and have not been disposed of by the State of Oregon, or by the legislative assembly thereof, for the purposes expressed in said act of Congress or any thereof.

XI. And your orator further shows to your honors that on the eighteenth day of June, A. D. 1874, the Congress of the United States passed and the President duly approved an act which, after reciting that certain lands had theretofore by acts of Congress been granted to the State of Oregon to aid in the construction of certain military wagon roads in said State, and that there was no existing law providing for the issuing of formal patents for said lands, provided as follows:

"That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall, by public act, have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon the payment of the necessary expenses thereof: *Provided*, That this shall not be construed to revive any land grant already expired, nor to create any new rights of any kind, except to provide for issuing patents for lands to which the State is already entitled."

9 XII. And your orator further shows to your honors that on the 19th day of June, A. D. 1876, the President of the United States, being deceived, misled, and imposed upon by the false and fraudulent certificates hereinabove set forth, issued to the defendant, The Dalles Military Road Company, a patent for $126{,}910\frac{23}{100}$ acres of land included in the grants made or intended to be made by said acts of Congress, a copy of which patent is hereto annexed, marked Exhibit A, and made part of this bill of complaint.

XIII. And your orator further shows to your honors that on the 31st day of May, A. D. 1876, The Dalles Military Road Company, by its then president, P. J. Martin, and its then secretary, C. N. Thornbury, pursuant to a resolution of the board of directors thereof passed on the day last aforesaid, made, executed, and delivered to Edward Martin a deed, a certified copy of which is hereunto attached, marked Exhibit B, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 31st day of May, A. D. 1876, and was recorded in record of deeds for Wasco County, Oregon, in volume E, on pages 435, 436, 437, and 438.

That on the 21st day of March, A. D. 1882, Eleanor Martin, as the guardian of the person and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minor heirs of Edward Martin, deceased, under an order and license of the county

court of Wasco County, Oregon, made, executed, and delivered to Peter Donahue and James Phelan a deed, a certified copy of which is hereunto attached, marked Exhibit C, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 5th day of April, A. D. 1882, and was recorded in record of deeds for Wasco County, Oregon, in volume H, on pages 82, 83, and 84.

That on the 3rd day of August, A. D. 1882, James Phelan and Alice, his wife, made, executed, and delivered to Peter Donahue a deed, a certified copy of which is hereto attached, marked Exhibit D, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 13th day of September, A. D. 1882, and was recorded in record of deeds for Wasco County, Oregon, in volume H, on pages 275, 276, and 277.

That on the 4th day of August, A. D. 1884, Peter Donahue and Annie, his wife, D. V. B. Henaire and Mary, his wife, Eleanor Martin, T. J. Martin and Margaret A., his wife, James V. Martin, Thomas V. Martin and Ada B., his wife, Edward Martin, Barton L. Walker and Genevieve E., his wife, made, executed, and delivered to the Eastern Oregon Land Company, a private incorporation, a deed, a certified copy of which is hereunto attached, marked Exhibit E, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 15th day of October, A. D. 1884, at 10.30 o'clock a. m., and was recorded in the record of deeds of Wasco County, Oregon, in volume J, on pages 119, 120, 121, 122, 123, and 124.

That each and every of said deeds conveyed the lands in bulk, and purported to grant to the respective grantees all the lands lying and being in the State of Oregon, granted or intended to be granted to the State of Oregon by the act of Congress first hereinabove pleaded and granted or intended to be granted by the State of Oregon to The Dalles Military Road Company by the act of the legislative assembly first hereinbefore pleaded, and that the substantive parts of both of said acts are recited in all the said deeds and expressly made parts of each thereof.

10 XIV. And your orator further shows to your honors that the Eastern Oregon Land Company is a private corporation, purporting to have been incorporated under the laws of the State of California, on the 26th day of September, A. D. 1884. That the enterprise and business in which said corporation proposed to engage was, among other things, that of buying and selling lands in the State of Oregon. That the incorporators were P. J. Martin, Eleanor Martin, D. V. B. Henaire, P. Donahue, Edward Martin, Thomas S. Martin, J. V. Martin, Genevieve E. Walker, and Jos. W. Winans. That said corporation is still in being, and that D. V. B. Henarie is the president and T. B. Beach the secretary thereof.

XV. And your orator further shows to your honors that the maps or plats referred to in the certificate hereinabove set forth showed the line of the pretended road to be three hundred and fifty-seven miles, which would make the grant of lands covered by the act of Congress first aforesaid embrace in the aggregate six hundred and eighty-five thousand four hundred and forty acres, of which five hundred and fifty-eight thousand five hun-

dred and twenty-nine and $\frac{77}{100}$ acres are not yet patented to said road company aforesaid, and the said road company inequitably claims the right to have a patent issued therefor.

XVI. And your orator further shows to your honors, that each and every of the defendants, to wit, The Dalles Military Road Company James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, The Eastern Oregon Land Company, and also James Phelan and Alice Phelan, and Peter Donahue and Annie Donahue, at the time of the execution and delivery of the deeds aforesaid, had full knowledge that the road provided for by the said act of Congress first aforesaid had not at any time been constructed and maintained as required by the said act of Congress and by the laws of the State of Oregon, so as to be in any sense whatsoever a public highway, or so that it could be used by the United States or by any of the citizens or residents thereof as a public highway, or so that the United States could transport its property, troops, or mails over the same; and also had full knowledge that no grades had been established or constructed upon said road or any part thereof; that no ferries had been established or maintained; that no clearing done or any part thereof; no bridges built over any streams on the line thereof, and no cuts made and no turnouts constructed anywhere on said line of road by The Dalles Military Road Company or any of the grantors or grantees mentioned and described in any of the said deeds aforesaid; and that no bridges had been built or maintained over any streams on the line of said road; and had full knowledge that said road was not begun nor completed within five years from the date of the passage of the act of Congress first aforesaid, and that it had never been begun, constructed, or maintained, and that each and every of said defendants well knew that the statements made in the certificate of the governor of Oregon hereinabove set forth were false; that the governor did not at any time whatsoever examine the road referred to in his said certificate, and that said certificate had been procured by false and fraudulent representations as aforesaid, and that the patent aforesaid was found to be issued upon said false and fraudulently-procured certificate.

11 *Prayer.*

I. Your orator therefore prays that all the lands granted to the State of Oregon by the act of Congress of date Feb. 25, A. D. 1877, be decreed forfeit to the United States and restored to the public domain.

II. That the patents described in this bill of complaint be declared fraudulent and void.

III. That the certificates described in this bill of complaint be declared fraudulent and void.

IV. That the deeds described in this bill of complaint be declared fraudulent and void.

V. That the United States have such other and further relief as to equity seemeth meet.

VI. That the United States writ of subpœna may issue requiring the defendants to appear in this honorable court under certain pains and penalties therein prescribed and answer the foregoing bill of complaint.

VI. And that the defendants pay the costs, expenses, and disbursements of this suit.

C. W. CHAPMAN,
Acting Attorney-General.
LEWIS L. MCAUTHUR,
U. S. Attorney for Oregon.
WILLIAM CAREY JOHNSON,
Special Assistant U. S. Attorney.

(Endorsed:) Filed August 29, 1889. R. H. Lamson, clerk.

12 *Exhibit "A."*

S. S. M. W. O. D.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., Aug. , 1889.

I, W. M. Stone, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of the patent issued to The Dalles Military Wagon Road Company June 19th, 1876, for lands in the State of Oregon, is a true and literal exemplification from the record thereof in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] W. M. STONE,
Acting Commissioner of the General Land Office.

13 No. 1.

A. W. C. J. M. W. Ex.

THE UNITED STATES OF AMERICA,

To all to whom these present shall come, greeting:

Whereas, by the act of Congress approved February 25, 1867, entitled, "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," and for this purpose, there is hereby granted alternate sections of public lands designated by odd numbers to the extent of three sections in width on each side of said road; Provided that the lands hereby granted shall be exclusively applied to the construction of said road, and to no other purpose.

And whereas by the 4th section of said act it is further enacted, that the State of Oregon is authorized to locate and use in the construction of said road an additional amount of public lands not previously reserved to the United States, nor otherwise disposed of, and not exceeding ten miles in distance from it, equal to the amount received from the operation of this act in the first section, to be selected in alternate sections.

And whereas it is shown by certificate on file of the Governor of said State, bearing date of June 23, 1869, that said Dalles military road had been completed in conformity with the requirements of said act.

And whereas, in accordance with the act of Congress approved June 18, 1874, the title to the lands thus granted by said act of February 25, 1867, is conveyed by the issuing of patent to the said State of Oregon for the use and benefit of said Military Road Company.

14 And whereas certain tracts have been selected under the act aforesaid by Orlando Humason and Z. F. Moody, the land agents of said Dalles Military Wagon Road Company, as shown by their original list of selections, dated November 14, 1870, and May 3, 1871, and certified under dates of November, 1870, and January 9, 1872, by the registers and receivers at Le Grande and Oregon City, Oregon, the said tracts being described as follows, to wit:

SOUTH OF BASE LINE AND EAST OF WILLAMETTE MERIDIAN, LE GRANDE DISTRICT.

Township thirteen, range twenty-nine.

South half of the southeast quarter and the south half of southwest quarter of section three, containing one hundred and sixty acres; all of section five, containing six hundred and forty-one acres and ninety-eight hundredths of an acre; all of section seven, containing six hundred and forty-four acres and fifty-four hundredths of an acre; all of section nine, containing six hundred and forty acres; south half of northeast quarter, south half of northwest quarter, and south half of section eleven, containing four hundred and eighty acres; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; all of section nineteen, containing six hundred and forty-one acres and eighty hundredths of an acre; north half and southwest quarter of section twenty-one, containing four hundred and eighty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred

15 and forty acres; all of section twenty-seven, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-one, containing six hundred and fifty-four acres and fifty-six hundredths of an acre; all of section thirty-three, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

Township thirteen, range thirty.

South half of southeast quarter and south half of the southwest quarter of section five, containing one hundred and sixty acres; all of section seven, containing six hundred and forty-four acres and forty-four hundredths of an acre; all of section nine, containing six hundred and forty acres; south half northeast quarter, south half northwest quarter, and south half of section eleven, containing four hundred and eighty acres; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; north half southwest quarter and north half southeast quarter of section nineteen, containing five hundred and sixty acres; all of section twenty-one, containing six

hundred and forty acres; all of section twenty-one, containing six hundred and forty acres; all of section twenty-three containing six hundred and forty acres; southwest quarter of northeast quarter, southwest quarter of northwest quarter, and south half of section twenty-five, containing four hundred acres; southeast quarter of northeast quarter northeast of northwest quarter, and south half of section twenty-seven, containing four hundred acres; northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, and south half of section twenty-nine, containing six hundred acres; all of section thirty-one, containing six hundred and fifty acres and forty-three hundredths of an acre; all of section thirty-three, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

16

Township thirteen, range thirty-one.

South half of southeast quarter, south half of southwest quarter of section three, containing one hundred and sixty acres; southeast quarter southeast quarter of southwest quarter and north half of section seven, containing five hundred and twenty-one acres and eight-hundredths of an acre; all of section nine, containing six hundred and forty acres; all of section eleven, containing six hundred and forty acres; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; north half of southeast quarter, north half of southwest quarter, southwest quarter of southwest quarter, and north half of section nineteen, containing five hundred and twenty-one acres and twenty-eight hundredths of an acre; north half and southeast quarter of section twenty-one, containing four hundred and eighty acres; west half of southwest quarter, southeast quarter of southwest quarter and north half of section twenty-three, containing four hundred and forty acres; south half of northeast quarter, south half of northwest quarter, northeast quarter of northeast quarter, and south half of section twenty-five, containing five hundred and twenty acres; all of section twenty-seven, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-one, containing six hundred and forty-one acres and eighty-six hundredths of an acre; all of section thirty-three, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

17

Township twelve, range thirty-two.

Southeast quarter and south half of southwest quarter of section thirty-five, containing two hundred and forty acres.

Township thirteen, range thirty-two.

All of section one, containing six hundred and forty acres; all of section three, containing six hundred and forty acres and ninety-six hundredths of an acre; south half of southeast quarter of section five, containing eighty acres; south half of northeast quarter, south half of northwest quarter, and south half of section seven, containing four hundred and eighty-one acres and twenty-two hundredths of an acre; all of section nine, containing six hundred and forty acres; all of section eleven, contain-

ing six hundred and forty acres; north half of northeast quarter, southeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, west half of southwest quarter and southeast quarter, southwest quarter of section thirteen, containing four hundred and eighty acres; southwest quarter, north half of southeast quarter, southeast quarter of southeast quarter, and north half of section fifteen, containing six hundred acres; all of section seventeen, containing six hundred and forty acres; all of section nineteen, containing six hundred and forty
18 acres; north half and southwest quarter of section twenty-one, containing four hundred and eighty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred and forty acres; all of section twenty-seven, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

Township twelve, range thirty-three.

South half of section twenty-five, containing three hundred and twenty acres; south half of section thirty-one, containing three hundred and nineteen acres and eighty-one-hundredths of an acre; south half of northeast quarter, south half of northwest quarter, and south half of section thirty-three, containing four hundred and eighty acres.

Township thirteen, range thirty-three.

Southeast quarter, north half southwest quarter, and north half of section one, containing five hundred and fifty-nine acres and forty-six hundredths of an acre; all of section three, containing six hundred and thirty-nine acres and ninety-four hundredths of an acre; all of section five, containing six hundred and forty-two acres and ninety-six hundredths of an acre; all of section seven, containing six hundred and forty-two acres and seventy-eight hundredths of an acre; north half southeast quarter, southeast quarter of southeast quarter, northwest quarter of southwest quarter, and north half of section nine, containing four hundred and eighty acres; east half northwest quarter, south half of northeast quarter, northeast
19 quarter of northeast quarter, southwest quarter of southeast quarter, and southwest quarter of section eleven, containing four hundred acres; east half of northwest quarter, and east half of section thirteen, containing four hundred acres; all of section fifteen, containing six hundred and forty acres; northeast quarter and south half of section seventeen, containing four hundred and eighty acres; all of section nineteen, containing six hundred and fourty-nine acres and thirty-hundredths of an acre; all of section twenty-one, containing six hundred and forty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred and forty acres; all of section twenty-seven, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; north half southeast quarter north half southwest quarter, and north half of section thirty-one, containing four hundred and ninety-six acres and forty-one-hundredths of an acre; north half of section thirty-three, containing three hundred and twenty acres.

Township twelve, range thirty-four.

All of section thirty-one, containing six hundred and forty-one acres and twenty-two hundredths of an acre; south half of southeast quarter and south half of southwest quarter of section thirty-three, containing one hundred and sixty acres.

Township thirteen, range thirty-four.

South half of section three, containing three hundred and twenty acres; all of section five, containing six hundred and forty-three acres and sixteen hundredths of an acre; southwest quarter of the northeast quarter of section seven, containing three hundred and twenty-two acres and seventy-five hundredths of an acre; all of section nine containing six hundred and forty acres; all of section eleven, containing six hundred and forty acres; all section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; west half of southwest quarter, southeast of southwest quarter, and southeast quarter of southeast quarter of section seventeen, containing one hundred and sixty acres; all of section nineteen, containing six hundred and forty-six acres and four-hundredths of an acre; south half of northwest quarter, northwest quarter of northwest quarter, northeast quarter of northeast quarter, west half of southeast quarter, southeast quarter of southeast quarter, and southwest quarter of section twenty-one, containing four hundred and forty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred and forty acres; all of section twenty-seven, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; north half and southeast quarter of section thirty-one, containing four hundred and eighty-five acres; all of section thirty-three, containing six hundred and forty acres; north half and southwest quarter of section thirty-five, containing four hundred and eighty acres.

Township thirteen, range thirty.

East half of northeast quarter and northwest quarter of the northeast quarter of section twenty-five, containing one hundred and twenty acres.

21 NORTH OF BASE LINE AND EAST OF WILLAMETTE MERIDIAN, OREGON CITY DISTRICT.

Township one, range thirteen.

West half of northwest quarter, southeast quarter of northwest quarter *quarter*, west half of southwest quarter, east half of southeast quarter, and northeast quarter of section thirteen, containing four hundred and forty acres; east half of northwest quarter of section fifteen, containing eighty acres.

Township one, range fourteen.

All of section one, containing six hundred and forty-eight acres and sixteen hundredths of an acre; all of section three, containing six hundred and fifty-three acres and fifty-four hundredths of an acre; south half of

section five, containing three hundred and twenty acres; east half of northwest quarter, east half of southwest quarter, west half of northwest quarter, and east half of section seven, containing five hundred and eighty-six acres and forty hundredths of an acre; southwest quarter of section nine, containing one hundred and sixty acres; all of section eleven, containing six hundred and forty acres; all of section thirteen, containing six hundred and forty acres; east half of section fifteen, containing three hundred and twenty acres; north half of southwest quarter, northwest quarter and east half of section seventeen, containing five hundred and sixty acres; north half of section twenty-one, containing three hundred and twenty acres; north half of southeast quarter, north half of southwest quarter, and north half of section twenty-three, containing four hundred and eighty acres.

22 *Township two, range fourteen.*

South half of section twenty-one, containing three hundred and twenty acres; south half of southeast quarter, south half of southwest quarter of section twenty-three, containing one hundred and sixty acres; north half of section twenty-five, containing three hundred and twenty acres; north half of northeast quarter and south half of section twenty-seven, containing four hundred acres; southeast quarter of northwest quarter, southwest quarter and east half of section twenty-nine, containing five hundred and twenty acres; east half of northeast quarter and southwest quarter of northeast quarter of section thirty-one, containing one hundred and twenty acres; north half of southeast quarter, north half of southwest quarter, and north half of section thirty-three, containing four hundred and eighty acres; all of section thirty-five, containing six hundred and forty acres.

Township one, range fifteen.

Northwest quarter, east half of southwest quarter, and east half of section one, containing five hundred and fifty-eight acres and ninety-sixth hundredths of an acre; all of section three, containing six hundred and thirty-eight acres and ninety-six hundredths of an acre; all of section five, containing six hundred and forty acres and eighty-seventh hundredth of an acre; all of section seven, containing six hundred and ninety-three acres and five hundredths of an acre; northeast quarter of northeast quarter, south half of northeast quarter, south half of northwest quarter, and south half of section nine, containing five hundred and twenty acres; west half of northeast quarter, north-
23 east quarter of northeast quarter, lots numbered one, two, three, and four, and west half of section eleven, containing six hundred and six acres and fifty-one hundredths of an acre; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; north half of southeast quarter, southwest quarter of southeast quarter, southwest quarter and north half of section nineteen, containing six hundred and fifty-one acres and twelve hundredths of an acre; all of section twenty-one, containing six hundred and forty acres; east half of northeast quarter, west half of northwest quarter, lots numbered one, two, three, four, five, six, seven, and eight, and southwest quarter of section twenty-three, containing five hundred and ninety-three acres and seventy hundredths of

an acre; east half of northeast quarter, northwest quarter of northeast quarter, north half of northwest quarter, northwest quarter of southwest quarter and lots numbered one, two, three, four, five, six, seven, and eight of section twenty-five, containing four hundred and ninety-two acres and sixty-two hundredths of an acre; north half of section twenty-seven, containing three hundred and twenty acres; east half of northwest quarter, southwest quarter of northwest quarter, and northeast quarter of section twenty-nine, containing two hundred and eighty acres.

Township two, range fifteen.

South half of northeast quarter, south half of northwest quarter, and south half of section twenty-five, containing four hundred and eighty acres.

South half of northeast quarter, south half of northwest quarter
24 and south half of section twenty-seven, containing four hundred and eighty acres; south half of northeast quarter, south half of northwest quarter, and south half of section twenty-nine, containing four hundred and eighty acres; east half of southwest quarter, west half of fractional northwest quarter, west half of fractional southwest quarter and southeast quarter of section thirty-one, containing four hundred and fifty-six acres and ninety-eight hundredths of an acre; east half of southwest quarter, northwest quarter of southwest quarter, northwest quarter and east half of section thirty-three, containing six hundred acres; northeast quarter of northwest quarter, west half of northwest quarter, southeast quarter of northeast quarter, east half of southeast quarter, southwest quarter of southeast quarter, northwest quarter of southwest quarter and lots numbered one, two, three, four, five, six, seven, eight, nine, and ten of section thirty-five, containing five hundred and seventy-three acres and thirty-eight hundredths of an acre.

Township one, range sixteen.

All of section three, containing six hundred and thirty-seven acres and sixty hundredths of an acre; all of section five, containing six hundred and thirty-seven acres and sixty-four hundredths of an acre; all of section seven, containing six hundred and ninety-two acres and eighteen hundredths of an acre; all of section nine, containing six hundred and forty acres; all of section eleven, containing six hundred and forty acres; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; all of section nineteen,
25 containing six hundred and ninety-three acres and ninety-four hundredths of an acre; all of section twenty-one, containing six hundred and forty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred and forty acres; all of section twenty-seven, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; northeast quarter of northeast quarter and lots numbered one, two, and three of section thirty-one, containing one hundred and eighty-six acres and forty hundredths of an acre; all of section thirty-three, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

Township two, range sixteen.

All of section thirty-one, containing six hundred and ninety-three acres and forty-sixth hundredths of an acre; south half of section thirty-three, containing three hundred and twenty acres.

Township one, range seventeen.

Southwest quarter of section seventeen, containing one hundred and sixty acres; all of section nineteen, containing six hundred and eighty-seven acres and thirty hundredths of an acre; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-one, containing six hundred and eighty acres and sixty-four hundredths of an acre; all of section thirty-three, containing six hundred and forty acres.

SOUTH OF BASE LINE AND EAST OF WILLAMETTE MERIDIAN.

Township one, range seventeen.

All of section five, containing six hundred and fifty-four acres
26 and forty-six hundredths of an acre. All of section seven, containing six hundred and five acres and seventy-six hundredths of an acre; all of section seventeen, containing six hundred and forty acres; all of section nine, containing six hundred and forty acres; all of section nineteen, containing six hundred and ninety-seven acres and fifty-four hundredths of an acre; west half of northeast quarter, west half of southeast quarter, and west half of section twenty-one, containing four hundred and eighty acres; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-one, containing five hundred and ninety-seven acres and twenty-two hundredths of an acre; west half of northeast quarter, west half of southeast quarter, and west half of section thirty-three, containing four hundred and eighty acres.

Township two, range seventeen.

All of section five, containing six hundred and fifty acres and seventy-eight hundredths of an acre; all of section seven, containing six hundred and five acres and sixty hundredths of an acre; west half of section nine, containing three hundred and twenty acres; east half of northeast quarter, east half of southeast quarter, and west half of section seventeen, containing four hundred and eighty acres; all of section nineteen, containing six hundred acres and eighty hundredths of an acre; west half of section twenty-one, containing three hundred and twenty acres; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-one, containing five hundred and ninety-seven acres and eighty hundredths of an acre; all of section thirty-three, containing six hundred and forty acres.

Township six, range seventeen.

27 All of section one, containing six hundred and forty-two acres and eighty-two hundredths of an acre; all of section three, containing six hundred and fifty-five and fifty-four hundredths of an acre;

all of section five, containing six hundred and sixty-six acres and twenty-four hundredths of an acre; east half of northeast quarter, south half of southwest quarter, and southeast quarter of section seven, containing three hundred and twelve acres and fifty hundredths of an acre; all of section nine, containing six hundred and forty acres; all of section eleven, containing six hundred and forty acres; north half of section thirteen, containing three hundred and twenty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; all of section nineteen, containing six hundred and fourteen acres and twenty hundredths of an acre; all of section twenty-one, containing six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-one, containing six hundred and fourteen acres and thirty-eight hundredths of an acre; all of section thirty-three, containing six hundred and forty acres.

Township seven, range seventeen.

All of section three, containing six hundred and thirty-eight acres and thirty hundredths of an acre; all of section five, containing six hundred and thirty-nine acres and eight hundredths of an acre; all of section seven, containing six hundred and eleven acres and forty hundredths of an acre; all of section nine, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; all of section seventeen, containing six hundred and forty acres; all of section nineteen,
28 containing six hundred and sixteen acres; all of section twenty-one, containing six hundred and forty acres; all of section twenty-three, containing six hundred and forty acres; all of section twenty-five, containing six hundred and forty acres; all of section twenty-seven, concontaining six hundred and forty acres; all of section twenty-nine, containing six hundred and forty acres; all of section thirty-one, containing six hundred and thirteen acres and eighty hundredths of an acre; all of section thirty-three, containing six hundred and forty acres; all of section thirty-five, containing six hundred and forty acres.

Township eight, range seventeen.

All of section one, containing six hundred and thirty-nine acres and twenty-two hundredths of an acre; all of section three, containing six hundred and forty-one acres and ninety-eight hundredths of an acre; all of section five, containing six hundred and forty acres and ninety-eight hundredths of an acre; northeast quarter of section seven, containing one hundred and sixty acres; all of section nine, containing six hundred and forty acres; all of section eleven, containing six hundred and forty acres; all of section thirteen, containing six hundred and forty acres; all of section fifteen, containing six hundred and forty acres; east half of southwest quarter, northwest quarter and east half of section twenty-three, containing five hundred and sixty acres; east half and northwest quarter of section twenty-five, containing four hundred and eighty acres.

The said tracts, as described in the foregoing pages, numbered
29 two to thirteen inclusive, contain the aggregate area of one hundred and twenty-six thousand nine hundred and ten acres and twenty-three hundredths of an acre ($126{,}910\frac{23}{100}$).

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted, and by these presents do give and grant unto the said State of Oregon for the use and benefit of the Dalles Military Wagon Road Company, of said State, and its assigns, the tracts of land selected as aforesaid and described in the foregoing, to have and to hold the said tracts, with the appurtenances thereof, unto the said State for the use and benefit of the said Dalles Military Wagon Road Company and its assigns forever.

In testimony whereof I, Ulyses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this nineteenth day of June, in the year of our , one thousand eight hundred and seventy-six, and of the independence of the United States the one hundredth.

By the President.

[SEAL.]

U. S. GRANT,
By D. D. CONE,
Secretary.
S. W. CLARK,
Recorder of the General Land Office.

30 *Exhibit B.*

Certified copy of deed. Dalles Military Road Company to Edward Martin. Dated May 31, 1876.

[Filed for record on the 31st day of May, A. D. 1876.]

This indenture, made and entered into this 31st day of May, A. D. 1876, between The Dalles Military Road Company, a corporation duly incorporated, organized, and existing under the laws of the State of Oregon, having its principal office and place of business at Dalles City, Wasco County, State of Oregon, the party of the first part, and Edward Martin, of the city and county of San Francisco, State of California, the party of the second part, witnesseth: That the said party of the first part, The Dalles Military Road Company, a corporation as aforesaid, for the sum of $125,000 to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, released and conveyed, and by these presents it does grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns, all the lands lying and being in the State of Oregon, granted or intended to be granted to said State by act of Congress approved February 25, A. D. 1867, entitle "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," and the right to a patent or patents for said lands granted to said party of the first part by act of Congress approved June 18, 1874, entitled "An act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases," which said lands were granted or intended to be granted by the State of Oregon to the said Dalles Military Road Company by an act of the legislative assembly of said State of Oregon approved October 20, 1868, entitled "An act donating certain lands to The Dalles Military Road Company," which

said several acts are hereby made part hereof, and all the right, title, and interest acquired or to be acquired by the party of the first part under the said several acts hereinbefore referred to, or either *to* them, and also all future right, title, interest, claim, property, and demand which the party of the first part may at any time hereafter acquire to said lands or any part thereof, or to any lands or to any patents or patent therefor by virtue of said acts of Congress or either of them, and said act of the legislative assembly of the State of Oregon, whether said lands are surveyed or unsurveyed, by virtue of any further compliance or any preceding compliance with the requirements of said acts or otherwise, subject to the payment by said party of the second part of whatever may be due the United States for entering and patenting said lands. It being the intention of the party of the first part to convey and it does hereby convey to the party of the second part the said lands, and all of the right, title, and interest acquired by said party of the first part under said acts or either of them in said lands or any part thereof or any lands, being all the interest in and to the lands and premises hereinbefore described, together with any and all further interest that it may hereafter acquire or now possess by virtue of any further compliance with all or any of said several acts referred to; reserving and excepting from this conveyance, however, all sales of land heretofore made by the party of the first part.

The said party of the first part hereby covenants and agrees with the party of the second part that it will at any time when desired by said party of the second part to him, his heirs and assigns, any further conveyance and assurance of title to the lands aforesaid and every part thereof, and said party of the first part covenants and agrees with said party of the second part to keep up its corporate organization and to do every act and thing necessary and requisite to *to* perfect the title to all the lands included in the grant aforesaid.

31 To have and to hold the lands hereby granted and every part and parcel thereof unto the *the* said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has caused its corporate seal to be affixed to these presents and the same to be signed by its president and secretary by resolution of the board of directors thereof, duly passed to that effect at Dalles City, Wasco County, State of Oregon, this 31st day of May, A. D. 1876.

P. J. MARTIN,
President D. M. R. Co.
C. N. THORNBURRY,
Secretary D. M. R. Co.

And witness the seal thereof.
[SEAL.]

Signed, sealed, and delivered in the presence of—
BEN. KORTEN.
J. B. CONDON.

STATE OF OREGON, *County of Wasco:*

On the 31st day of May, A. D. 1876, before the undersigned, a notary public in and for Wasco County, State of Oregon, came the above-named

P. J. Martin, president of the Dalles Military Road Company, and C. N. Thornbury, secretary of said company, both of whom are well known to me to be the persons described in and who executed the foregoing conveyance, and the said P. J. Martin acknowledged to me that he had executed the said conveyance as president of the said Dalle Military Road Company, for the objects and purposes therein stated, in compliance with a resolution passed by the board of directors of said company on the 30th day of May, A. D. 1876, and the said C. N. Thornbury acknowledged to me that he had executed the said conveyance for the purposes therein set forth and in attestation thereto affixed to said conveyance the corporate seal of the said Dalles Military Road Company as secretary thereof, in compliance with a resolution of the board of directors of said company.

In witness whereof I have hereunto set my hand and affixed my notarial seal on the day and year first above written in this certificate.

[SEAL.] JAMES B. CONDON,
Notary Public, Oregon.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for Wasco County, and ex officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from The Dalles Military Road Company to Edward Martin, bearing date May 31, 1876, as the same now appears of record at pages 435, 436, 437, and 438, Volume E, record of deeds for Wasco County, Oregon, now in my office and custody. And that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 2d day of September, 1887.

GEO. H. THOMPSON,
Clerk.

[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

32 *Exhibit C.*

Certified copy of deed, Eleanor Martin, guardian, etc., to Peter Donahue and James Phelan, dated March 21, 1882.

[Filed for record on April 5, 1882.]

This indenture made the 21st day of March, A. D. 1882, by and between Eleanor Martin, the duly appointed and qualified guardian of the persons and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, party of the first part, and Peter Donahue and James Phelan, of the city San Francisco, State of California, parties of the second part, witnesseth:

That whereas on the 3d day of January, A. D. 1882, the county court of Wasco County, in the State of Oregon, made an order and license of sale authorizing the said party of the first part to sell certain real estate of the said minors, situate in the counties of Wasco, Grant, and Baker, in the State of Oregon, and particularly described in the said order and license of

sale, and which said order and license of sale, now on file and of record in the said county court Wasco County, are hereby referred to and made a part of this indenture; and

Whereas, under and by virtue of the said order and license of sale, and pursuant to legal notices given thereof, the said party of the first part, on the 6th day of February, A. D. 1882, at 12 o'clock noon, at the court-house door, at The Dalles, in the county of Wasco, State of Oregon, offered for sale at public auction, and subject to confirmation by the said county court of Wasco County, the portion of the said real estate situated in the said county of Wasco, and specified and described in said order and license of sale, as aforesaid; and at such sale the said parties of the second part became the purchasers of the whole of the said real estate hereinafter particularly described, situated in Wasco County aforesaid, for the sum of $57,500, they being the highest and best bidders, and that being the highest and best sum bid for the same; and

Whereas the said county court of Wasco County, upon a due and legal return of her proceedings under the said order and license of sale made by the said party of the first part on the 24th day of February, 1882, did on the 6th day of March, A. D. 1882, make an order confirming the said sale and directing conveyances to be made, executed, and delivered to the said parties of the second part, and which order of confirmation now on file and of record in the said county court of Wasco county is hereby referred to and made a part of this indenture:

Now, therefore, the said Eleanor Martin, the guardian of the persons and estates of the said minors, James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, as aforesaid, the party of the first part, pursuant to the order last aforesaid of the said county court of Wasco County, for and in consideration of the said sum of $57,500 to her in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said parties of the second part, their heirs and assigns, forever, all the right, title, interest, and estate of the said James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, in and to all that part of the lands known as The Dalles military road lands, which are situate, lying, and being in the county of Wasco, State of Oregon, the said Dalles military road lands being the alternate sections of the public lands of the United States as surveyed, or to be surveyed by the United States, designated by odd numbers, to the extent of three sections in width on each side of the military road constructed by The Dalles Military Road Company from Dalles City, on the Columbia River, to Fort Boise, on the Snake River, and including such lieu lands as have been or may hereafter be selected and located not exceeding
33 10 miles in distance from said road, under and in pursuance of the act of Congress entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867, and any other acts of Congress, and the acts of the legislative assembly of the State of Oregon, relating or pertaining to the said Dalles military road lands, saving and excepting those portions of the Dalles military road lands which have been heretofore lawfully sold and conveyed by the said Dalles Military Road Company to other persons than

Edward Martin, and by said Edward Martin, in his lifetime, the said lands so previously conveyed not being included in this sale and conveyance, which said lands are listed in part only and amount to 247,230 acres, more or less. The interest of said minors in and to the above mentioned and designated lands so sold is five-eighths of three-fourths thereof, subject to the right of dower therein and thereto held by and belonging to Eleanor Martin, the widow of Edward Martin, deceased.

Together with the tenements, hereditaments, and appurtenances whatsoever to the same belonging or in anywise appertaining.

To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns, to their sole use, benefit, and behoof forever.

In witness whereof, the said party of the first part, guardian as aforesaid, has hereto set her hand and seal the day and year first above written.

[SEAL.] ELEANOR MARTIN,
Guardian of the Persons and Estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D Martin, minors.

Signed, sealed, and delivered in the presence of—
T. P. BEACH,
SAM'L S. MURFEY.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 22d day of March, A. D. 1882, personally came before me, Samuel S. Murfey, a commissioner of deeds for the State of Oregon, residing at the city and county of San Francisco, State of California, Eleanor Martin, guardian of the persons and estate of James Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, to me personally known to be the identical person described in and who executed the foregoing deed, and who acknowledged to me that she executed the same as guardian aforesaid freely, for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and affixed my official seal this 22d day of March, A. D. 1882.

[SEAL.] SAM'L S. MURFEY,
Commissioner of Deeds for the State of Oregon.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for said Wasco County, and ex officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from Eleanor Martin, guardian, etc., to Peter Donahue and James Phelan, bearing date March 21, 1882, as the same now appears of record at pages 82, 83, and 84, volume "H," records of deeds for Wasco County, Oregon, now in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 3d day of September, 1887.

[SEAL.] GEORGE H. THOMPSON, *Clerk.*
By J. M. HUNTINGTON, *Deputy Clerk.*

34 *Exhibit "D."*

Certified copy of deed. James Phelan and wife to Peter Donahue. Dated August 3, 1882.

[Filed for record on September 13, 1882.]

This indenture, made this 3d day of August, A. D. 1882, by and between James Phelan and Alice Phelan, his wife, both of the city and county of San Francisco, State of California, the parties of the first part, and Peter Donahue, of the same place, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of $71,625, lawful money of the United States, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey unto the said party of the second part all the right, title, and interest of the parties of the first part in and to the lands known as The Dalles Military Road lands, which are situate, lying, and being in the counties of Wasco, Grant, and Baker, State of Oregon; The said Dalles Military Road lands being the alternate sections of the public lands of the United States, as surveyed or to be surveyed by the United States, designated by odd numbers, to the extent of three sections in width on each side of the military road constructed by The Dalles Military Road Company from Dalles City, on the Columbia River, to Fort Boise, on the Snake River, and including such lieu lands as have been, or may hereafter be, selected and located, not exceeding 10 miles in distance from said road, under and in pursuance of the act of Congress entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867, and any other acts of Congress, and the acts of the legislative assembly of the State of Oregon relating or pertaining to the said Dalles military road lands, saving and excepting those portions of the said Dalles military road lands which have been heretofore lawfully sold and conveyed by the said Dalles Military Road Company to other persons than Edward Martin and by said Edward Martin in his life-time, the said lands so previously conveyed not being included in this sale and conveyance.

The lands hereby conveyed being all and singular the property and premises conveyed to the said James Phelan, one of the parties of the first part, by Eleanor Martin, guardian of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, by three deeds, each bearing date the 21st day of March, A. D. 1882, and recorded, respectively, as follows:

In Wasco County, on the 5th day of April, 1882, in volume H of deeds, page 82.

In Grant County, on the 22d day of April, 1882, in volume E of deeds, pages 9 and 12.

In Baker County, on the 3d day of April, 1882, in volume 9 of deeds, page 150.

Together with the tenements, hereditaments, and appurtenances whatsoever to the same belonging or in any wise appertaining.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit, and behoof forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the days and year first above written.

JAMES PHELAN. [SEAL.]
MRS. ALICE PHELAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
SAM'L S. MURFEY,
WM. B. LATHAM,
As to the Signature of James Phelan.
EDWIN F. COREY,
JOHN B. SIMPSON,
As to Alice Phelan.

35 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 3d day of August, A. D. 1882, personally came before me, Samuel S. Murfey, a commissioner of deeds for the State of Oregon, resident in the city and county of San Francisco, State of California, the within named James Phelan, to me personally known to be one of the identical persons described in and who executed the within instrument and acknowledged to me that he executed the same freely for the uses and purposes therein named.

Witness my hand and official seal as such commissioner this 3d day of August, A. D. 1882.

[SEAL.] SAM'L S. MURFEY,
Commissioner of Deeds for the State of Oregon in the State of California.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 12th day of August, in the year 1882, before me, the undersigned, Edwin F. Corey, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Oregon to take acknowledgments of deeds, etc., to be used or recorded therein personally appeared Alice Phelan, wife of James Phelan, to me personally known to be the identical person described in and who executed the within instrument, and acknowledged to me on an examination separate and apart from her husband that she executed the same freely and without fear or compulsion from any one for the uses and purposes therein named.

Given under my hand and official seal the day and year last aforesaid.

[SEAL.] EDWIN F. COREY,
Commissioner for the State of Oregon, Office 54 Wall Street, N. Y.

STATE OF OREGON,
County of Wasco, ss:

I, George H. Thompson, county clerk in and for said Wasco County, and ex-officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing

with the original deed from James Phelan and wife to Peter Donahue, and bearing date August 3d, 1882, as the same now appears of record at pages 275, 276, and 277, of Volume "H," records of deeds for Wasco County, Oregon, now in my office and custody. And that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of court, this 3d day of September, 1887.

GEORGE H. THOMPSON,
Clerk.

[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

36 *Exhibit "E."*

Certified copy of deed, Peter Donahue et als. to Eastern Oregon Land Company, dated August 11, 1884.

[Filed October 15, 1884, at 10.30 a. m.]

This indenture, made and entered into this 11th day of August, A. D. 1884, by and between Peter Donahue and Annie Donahue, his wife, D. V. B. Henarie and Mary A. Henarie, his wife, Eleanor Martin, T. J. Martin, and Margaret A. Martin, his wife, of the city and county of San Francisco, State of California, and James V. Martin, of the city and county of Los Angeles, State aforesaid, and Thomas S. Martin and Ada B. Martin, his wife, and Edward Martin, of the city of Portland, State of Oregon, and Barton L. Walker and Genevieve E. Walker, his wife, of the City of Washington, District of Columbia, parties of the first part, and the Eastern Oregon Land Company, a corporation duly organized and incorporated under the laws of the State of California, and having its office and principle place of business in the city and county of San Francisco, the party of the second part, witnesseth:

Whereas the said parties of the first part are the owners of and have each an undivided interest in common in the lands hereinafter mentioned and described in the respective proportions following, to wit:

The said Peter Donahue, three-sixteenths; the said D. V. B. Henarie, four-sixteenths; the said Eleanor Martin, four-sixteenths; the said P. J. Martin, one-sixteenth; the said James V. Martin, one-sixteenth; the said Thomas S. Martin, one-sixteenth; the said Edward Martin, one-sixteenth; and the said Genevieve E. Walker, one-sixteenth. And whereas the said parties of the first part have negotiated with the said party of the second part for the sale of the said lands upon the terms which have been mutually agreed upon by and between the several and respective parties hereto of the first and second parts:

Now, therefore, in consideration of the premises, and of the sum of one dollar, lawful money of the United States of America, to each of them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto said party of the second part, its successors and assigns, all those certain lands, situate, lying, and being in the counties of Wasco, Grant, and Baker, State of Oregon, granted to the

State of Oregon by the act of Congress of the United States of America, entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," approved February 25, A. D. 1867, and granted to the said Dalles Military Road Company by an act of the legislative assembly of the State of Oregon, entitled "An act donating lands to The Dalles Military Road Company," approved October 20, 1868.

Being the lands conveyed to Edward Martin, now deceased, by the said The Dalles Military Road Company by its deed bearing date May 31, 1876, and duly recorded in the office of the county clerk of the said county of Wasco on the 31st day of May, A. D. 1876, in volume E, page 435, and in the office of the county clerk of the said county of Grant on the 3d day of June, A. D. 1876, in book C, page 195, and in the office of the county clerk of the said county of Baker on the 7th day of June, A. D. 1876, in book D of deeds, page 200, and commonly known and designated as The Dalles Military Road lands, a portion of which lands are embraced in the county of Crook, recently formed, or about to be formed of and from a portion or portions of said Wasco and Grant counties.

37 Saving and excepting therefrom and from the operation of this conveyance certain portions and parcels of said Dalles military road lands heretofore sold and conveyed by the said Edward Martin, grantee thereof as aforesaid, in his life-time and by his successors in interest.

The several and respective interests of the several and respective parties of the first part by them respectively herein and hereby conveyed, being subject to the proper and respective proportions of the debts, charges, and expenses belonging thereto respectively.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurt'ances, unto the said parties of the second part, its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

P. DONAHUE.	[SEAL.]	JAS. V. MARTIN.	[SEAL.]
ANNIE DONAHUE.	[SEAL.]	THOS. S. MARTIN.	[SEAL.]
D. V. B. HENARIE.	[SEAL.]	ADA B. MARTIN.	[SEAL.]
MARY A. HENARIE.	[SEAL.]	EDWARD MARTIN.	[SEAL.]
ELEANOR MARTIN.	[SEAL.]	BARTON L. WALKER.	[SEAL.]
P. J. MARTIN.	[SEAL.]	GENEVIEVE E. WALKER.	[SEAL.]
MARGARET A. MARTIN.	[SEAL.]		

Signed, sealed, and delivered in the presence of—

A. Maude Henarie and Eugene W. Levy, as to the signature of Mary A. Henarie.

Annie Martin and Eugene W. Levy, as to signature of Margaret A. Martin.

Eugene W. Levy and Charles T. Stanley, as to signatures of P. Donahue and Annie Donahue.

Eugene W. Levy and T. P. Beach, as to signature of D. V. B. Henarie.

Eugene W. Levy and T. P. Beach, as to signature of Eleanor Martin.

Eugene W. Levy and T. P. Beach, as to signatures of P. J. Martin and James V. Martin.

Eugene W. Levy and Charles T. Stanley, as to signature of Edward Martin.

Eugene D. White, Arthur E. Sloan, witnesses to signature of Thomas S. Martin.

Eugene D. White and Arthur E. Sloan, witnesses to signature of Ada B. Martin.

Witnesses to signatures of Barton L. Walker and Genevieve E. Walker, John E. Beal, Albert D. Gilme.

STATE OF OREGON,
County of Multnomah, ss:

Be it remembered that on this 18th day of August, 1884, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named Thomas S. Martin and Ada B. Martin, who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same; and Ada B. Martin, wife of the said Thomas S. Martin, on an examination made by me separate and apart from her husband, acknowledged to me that she executed the same freely and voluntarily, and without fear, coercion, or compulsion from any one.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above written.

[SEAL.] EUGENE D. WHITE,
Notary Public for Oregon.

38 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared James V. Martin and Edward Martin, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco,

State of California, personally appeared Peter Donahue and Annie Donahue, his wife, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally and duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Annie Donahue, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared D. V. B. Henarie and Mary A. Henarie, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Mary A. Henarie, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco,
39 State of California, personally appeared P. J. Martin and Margaret A. Martin, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned, and the said Margaret A. Martin, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 25th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared Eleanor Martin (widow), to me personally known to be the identical person whose name is subscribed to, who is described in, and who executed the annexed and within instrument, and she duly acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

On the 12th day of September, A. D. 1884, before me, John E. Beall, a commissioner of deeds for the State of Oregon in and for the District of Columbia, duly appointed, commissioned, and sworn, and residing in the city of Washington, D. C., personally appeared Barton L. Walker and Genevieve E. Walker, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Genevieve E. Walker, on examination separate and apart from her said husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOHN E. BEALL,
Commissioner of Deeds for the State of Oregon in and for the District of Columbia.

STATE OF OREGON,
County of Wasco, ss:

I, George H. Thompson, county clerk in and for said Wasco County, and ex-officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from Peter Donahue et al. to the Eastern Oregon Land Company, and bearing date August 11, 1884, as the same now appears of record at pages 119, 120, 121, 122, 123, and 124 of volume J, records of deeds for Wasco County, Oregon, now in my office and custody. And that it is a true and correct transcript therefrom, and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 2d day of September, 1887.

GEORGE H. THOMPSON,
Clerk.

[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

40 *Exhibit B.*

Certified copy of deed. Dalles Military Road Company to Edward Martin. Dated May 31, 1876.

[Filed for record on the 31st day of May, A. D. 1876.]

This indenture, made and entered into this 31st day of May, A. D. 1876, between The Dalles Military Road Company, a corporation duly incorporated, organized, and existing under the laws of the State of Oregon, having its principal office and place of business at Dalles City, Wasco County, State of Oregon, the party of the first part, and Edward Martin, of the city and county of San Francisco, State of California, the party of the second part, witnesseth: That the said party of the first part, The Dalles Military Road Company, a corporation as aforesaid, for the sum of $125,000 to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, released and conveyed, and by these presents it does grant, bargain, sell, release, and convey, unto the said party of the second part, his heirs and assigns, all the lands lying and being in the State of Oregon, granted or intended to be granted to said State by act of Congress approved February 25, A. D. 1867, entitle' "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," and the right to a patent or patents for said lands granted to said party or the first part by act of Congress approved June 18, 1874, entitled "An act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases," which said lands were granted or intended to be granted by the State of Oregon to the said Dalles Military Road Company by an act of the legislative assembly of said State of Oregon approved October 20, 1868, entitled "An act donating certain lands to The Dalles Military Road Company," which said several acts are hereby made part hereof, and all the right, title, and interest acquired or to be acquired by the party of the first part under the said several acts, hereinbefore referred to, or either to them, and also all future right, title, interest, claim, property, and demand which the party of the first part may at any time hereafter acquire to said lands or any part thereof, or to any lands or to any patents or patent therefor by virtue of said acts of Congress, or either of them, and said act of the legislative assembly of the State of Oregon, whether said lands are surveyed or unsurveyed, by virtue of any further compliance or any preceding compliance with the requirements of said acts or otherwise, subject to the payment by said party of the second part of whatever may be due the United States for entering and patenting said lands. It being the intention of the party of the first part to convey, and it does hereby convey to the party of the second part the said lands, and all of the right, title, and interest acquired by said party of the first part under said acts or either of them in said lands or any part thereof or any lands, being all the interest in and to the lands and premises hereinbefore described, together with any and all further interest that it may hereafter acquire or now possess by virtue of any further compliance with all or any of said several acts referred to, reserving and excepting from this conveyance, however, all sales of land heretofore made by the party of the first part.

The said party of the first part hereby covenants and agrees with the party of the second part that it will at any time when desired by said party of the second part to him, his heirs and assigns any further conveyance and assurance of title to the lands aforesaid and every part thereof, and said party of the first part covenants and agrees with said party of the second part to keep up its corporate organization and to do every act and thing necessary and requisite to to perfect the title to all the lands included in the grant aforesaid.

41 To have and to hold the lands hereby granted and every part and parcel thereof unto the *the* said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has caused its corporate seal to be affixed to these presents, and the same to be signed by its president and secretary, by resolution of the board of directors thereof, duly passed to that effect at Dalles City, Wasco County, State of Oregon, this 31st day of May, A. D. 1876.

P. J. MARTIN,
President D. M. R. Co.
C. N. THORNBURY,
Secretary D. M. R. Co.

And witness the seal thereof.
[SEAL.]

Signed, sealed, and delivered in the presence of—
BEN. KORTEN.
J. B. CONDON.

STATE OF OREGON, *County of Wasco:*

On the 31st day of May, A. D. 1876, before the undersigned, a notary public in and for Wasco County, State of Oregon, came the above-named P. J. Martin, president of The Dalles Military Road Company, and C. N. Thornbury, secretary of said company, both of whom are well known to me to be the persons described in and who executed the foregoing conveyance, and the said P. J. Martin acknowledged to me that he had executed the said conveyance as president of the said Dalles Military Road Company for the objects and purposes therein stated, in compliance with a resolution passed by the board of directors of said company on the 30th day of May, A. D. 1876, and the said C. N. Thornbury acknowledged to me that he had executed the said conveyance for the purposes therein set forth, and in attestation thereto affixed to said conveyance the corporate seal of the said Dalles Military Road Company as secretary thereof, in compliance with a resolution of the board of directors of said company.

In witness whereof I have hereunto set my hand and affixed my notarial seal on the day and year first above written in this certificate.

[SEAL.] JAMES B. CONDON,
Notary Public, Oregon.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for Wasco County, and ex officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from The Dalles Military Road Company to Edward Martin,

bearing date May 31, 1876, as the same now appears of record at pages 435, 436, 437, and 438, Volume E, record of deeds for Wasco County, Oregon, now in my office and custody. And that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 2d day of September, 1887.

GEO. H. THOMPSON,
Clerk.

[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

42 *Exhibit C.*

Certified copy of deed, Eleanor Martin, guardian, etc., Peter Donahue and James Phelan, dated March 21, 1882.

[Filed for record on April 5, 1882.]

This indenture, made the 21st day of March, A. D. 1882, by and between Eleanor Martin, the duly appointed and qualified guardian of the persons and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, party of the first part, and Peter Donahue and James Phelan, of the city of San Francisco, State of California, parties of the second part, witnesseth:

That whereas on the 3d day of January, A. D. 1882, the county court of Wasco County, in the State of Oregon, made an order and license of sale authorizing the said party of the first part to sell certain real estate of the said minors, situate in the counties of Wasco, Grant, and Baker, in the State of Oregon, and particularly described in the said order and license of sale, and which said order and license of sale, now on file and of record in the said county court, Wasco County, are hereby referred to and made a part of this indenture; and

Whereas, under and by virtue of the said order and license of sale, and pursuant to legal notices given thereof, the said party of the first part, on the 6th day of February, A. D. 1882, at 12 o'clock noon, at the court-house door, at The Dalles, in the county of Wasco, State of Oregon, offered for sale at public auction, and subject to confirmation by the said county court of Wasco County, the portion of the said real estate situated in the said county of Wasco, and specified and described in said order and license of sale, as aforesaid; and at such sale the said parties of the second part became the purchasers of the whole of the said real estate hereinafter particularly described, situated in Wasco County aforesaid, for the sum of $57,500, they being the highest and best bidders, and that being the highest and best sum bid for the same; and

Whereas, the said county court of Wasco County, upon a due and legal return of her proceedings under the said order and license of sale made by the said party of the first part on the 24th day of February, 1882, did on the 6th day of March, A. D. 1882, make an order confirming the said sale, and directing conveyances to be made, executed, and delivered to the said parties of the second part, and which order of confirmation now on file and of record in the said county court of Wasco County is hereby referred to and made a part of this indenture:

Now, therefore, the said Eleanor Martin, the guardain of the persons

and estates of the said minors, James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, as aforesaid, the party of the first part, pursuant to the order last aforesaid of the said county court of Wasco County, for and in consideration of the said sum of $57,500 to her in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said parties of the second part, their heirs and assigns, forever, all the right, title, interest, and estate of the said James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, in and to all that part of the lands known as The Dalles military road lands, which are situate, lying, and being in the county of Wasco, State of Oregon, the said Dalles military road lands being the alternate sections of the public lands of the United States as surveyed, or to be surveyed by the United States, designated by odd numbers, to the extent of three sections in width on each side of the military road constructed by The Dalles Military Road Company from Dalles City, on the Columbia River, to Fort Boise, on the Snake River, and including such lieu lands as have been or may hereafter be selected and located, not exceeding
43 10 miles in distance from said road, under and in pursuance of the act of Congress entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867, and any other acts of Congress, and the acts of the legislative assembly of the State of Oregon relating or pertaining to the said Dalles military road lands, saving and excepting those portions of the Dalles military road lands which have been heretofore lawfully sold and conveyed by the said Dalles Military Road Company to other persons than Edward Martin, and by said Edward Martin, in his lifetime, the said lands so previously conveyed not being included in this sale and conveyance, which said lands are listed in part only and amount to 247,230 acres, more or less. The interest of said minors in and to the above mentioned and designated lands so sold is five-eighths of three-fo'rths thereof, subject to the right of dower therein and thereto held by and belonging to Eleanor Martin, the widow of Edward Martin, deceased.

Together with the tenements, hereditaments, and appurtenances whatsoever to the same belonging or in any wise appertaining.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns, to their sole use, benefit, and behoof forever.

In witness whereof the said party of the first part, guardian as aforesaid, has hereto set her hand and seal the day and year first above written.

[SEAL.] ELEANOR MARTIN,
Guardian of the persons and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors.

Signed, sealed, and delivered in the presence of—
T. P. BEACH.
SAM'L S. MURFEY.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 22d day of March, A. D. 1882, personally came before me, Samuel S. Murfey, a commissioner of Deeds for the State of Oregon, residing at the city and county of San Francisco, State of California, Eleanor Martin, guardian of the persons and estate of James Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, to me personally known to be the identical person described in and who executed the foregoing deed and who acknowledged to me that she executed the same as guardian aforesaid freely for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and affixed my official seal this 22d day of March, A. D. 1882.

[SEAL.] SAM'L S. MURFEY,
Commissioner of Deeds for the State of Oregon.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for said Wasco County, and ex-officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from Eleanor Martin, guardian, etc., to Peter Donahue and James Phelan, bearing date March 21, 1882, as the same now appears of record at pages 82, 83, and 84, volume H, records of deeds for Wasco County, Oregon, now in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 3d day of September, 1887.

GEORGE H. THOMPSON,
Clerk.

[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

44 *Exhibit D.*

Certified copy of deed. James Phelan and wife to Peter Donahue. Dated August 3, 1882.

[Filed for record on September 13, 1882.]

This indenture, made this 3d day of August, A. D. 1882, by and between James Phelan and Alice Phelan, his wife, both of the city and county of San Francisco, State of California, the parties of the first part, and Peter Donahue, of the same place, party of the second part, witnesseth:

That the said parties of the first part for and in consideration of the sum of $71,625, lawful money of the United States, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey unto the said party of the second part all the right, title, and interest of the parties of the first part in and to the lands known as The Dalles military road lands, which are situate, lying,

and being in the counties of Wasco, Grant, and Baker, State of Oregon; the said Dalles military road lands being the alternate sections of the public lands of the United States as surveyed or to be surveyed by the United States, designated by odd numbers, to the extent of three sections in width on each side of the military road constructed by The Dalles Military Road Company from Dalles City, on the Columbia River, to Fort Boise, on the Snake River, and including such lieu lands as have been or may hereafter be selected and located, not exceeding 10 miles in distance from said road, under and in pursuance of the act of Congress entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867, and any other acts of Congress and the acts of the legislative assembly of the State of Oregon relating or pertaining to the said Dalles military road lands, saving and excepting those portions of the said Dalles military road lands which have been heretofore lawfully sold and conveyed by the said Dalles Military Road Company to other persons than Edward Martin and by said Edward Martin in his life-time, the said lands so previously conveyed not being included in this sale and conveyance.

The lands hereby conveyed being all and singular the property and premises conveyed to the said James Phelan, one of the parties of the first part, by Eleanor Martin, guardian of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, by three deeds, each bearing date the 21st day of March, A. D. 1882, and recorded, respectively, as follows:

In Wasco County, on the 5th day of April, 1882, in volume H of deeds, page 82.

In Grant County, on the 22d day of April, 1882, in volume E of deeds, pages 9 and 12.

In Baker County, on the 3d day of April, 1882, in volume 9 of deeds, page 150.

Together with the tenements, hereditaments, and appertenances whatsoever to the same belonging or in any wise appertaining.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit, and behoof forever.

In witness w'ereof the said parties of the first part have hereunto set their hands and seals the days and year first above written.

JAMES PHELAN. [SEAL.]
MRS. ALICE PHELAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
SAM'L S. MURFEY,
WM. B. LATHAM,
As to the signature of James Phelan.

EDWIN F. COREY,
JOHN B. SIMPSON,
As to Alice Phelan

45 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 3d day of August, A. D. 1882, personally came before me, Samuel S. Murfey, a commissioner of deeds for the State of Oregon, resident in the city and county of San Francisco, State of California, the within named James Phelan, to me personally known to be one of the identical persons described in and who executed the within instrument, and acknowledged to me that he executed the same freely for the uses and purposes therein named.

Witness my hand and official seal as such commissioner this 3d day of August, A. D. 1882.

[SEAL.] SAM'L S. MURFEY,
Commissioner of Deeds for the State of Oregon in the State of California.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 12th day of August, in the year 1882, before me, the undersigned, Edwin F. Corey, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Oregon to take acknowledgments of deeds, etc., to be used or recorded therein, personally appeared Alice Phelan, wife of James Phelan, to me personally known to be the identical person described in and who executed the within instrument, and acknowledged to me on an examination separate and apart from her husband that she executed the same freely and without fear or compulsion from any one for the uses and purposes therein named.

Given under my hand and official seal the day and year last aforesaid.

[SEAL.] EDWIN F. COREY,
Commissioner for the State of Oregon, Office 54 Wall Street, N. Y.

STATE OF OREGON,
County of Wasco, ss:

I, George H. Thompson, county clerk in and for said Wasco County, and ex officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from James Phelan and wife to Peter Donahue, and bearing date August 3d, 1882, as the same now appears of record at pages 275, 276, and 277 of volume H, records of deeds for Wasco County, Oregon, now in my office and custody. And that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of court this 3d day of September, 1887.

GEORGE H. THOMPSON,
Clerk.

[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

46 *Exhibit E.*

Certified copy of deed, Peter Donahue et als. to Eastern Oregon Land Company, dated August 11, 1884.

[Filed October 15, 1884, at 10.30 a. m.]

This indenture, made and entered into this 11th day of August, A. D. 1884, by and between Peter Donahue and Annie Donahue, his wife, D. V. B. Henarie and Mary A. Henarie, his wife, Eleanor Martin, T. J. Martin and Margaret A. Martin, his wife, of the city and county of San Francisco, State of California, and James V. Martin, of the city and county of Los Angeles, State aforesaid, and Thomas S. Martin and Ada B. Martin, his wife, and Edward Martin, of the city of Portland, State of Oregon, and Barton L. Walker and Genevieve E. Walker, his wife, of the city of Washington, District of Columbia, parties of the first part, and the Eastern Oregon Land Company, a corporation duly organized and incorporated under the laws of the State of California, and having its office and principle place of business in the city and county of San Francisco, the party of the second part, witnesseth:

Whereas the said parties of the first part are the owners of and have each an undivided interest in common in the lands hereinafter mentioned and described in the respective proportions following, to wit:

The said Peter Donahue, three-sixteenths; the said D. V. B. Henarie, four-sixteenths; the said Eleanor Martin, four-sixteenths; the said P. J. Martin, one-sixteenth; the said James V. Martin, one sixteenth; the said Thomas S. Martin, one-sixteenth; the said Edward Martin, one-sixteenth; and the said Genevieve E. Walker, one-sixteenth. And whereas the said parties of the first part have negotiated with the said party of the second part for the sale of the said lands upon the terms which have been mutually agreed upon by and between the several and respective parties hereto of the first and second parts.

Now, therefore, in consideration of the premises and of the sum of one dollar, lawful money of the United States of America, to each of them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto said party of the second part, its successors and assigns, all those certain lands situate, lying and being in the counties of Wasco, Grant, and Baker, State of Oregon, granted to the State of Oregon by the act of Congress of the United States of America, entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," approved February 25, A. D. 1867, and granted to the said Dalles Military Road Company by an act of the legislative assembly of the State of Oregon, entitled "An act donating lands to The Dalles Military Road Company," approved October 20, 1868.

Being the lands conveyed to Edward Martin, now deceased, by the said The Dalles Military Road Company by its deed bearing date May 31, 1876, and duly recorded in the office of the county clerk of the said county of Wasco on the 31st day of May, A. D. 1876, in volume E, page 435, and in the office of the county clerk of the said county of Grant on the

3d day of June, A. D. 1876, in book C, page 195, and in the office of the county clerk of the said county of Baker on the 7th day of June, A. D. 1876 in book D of deeds, page 200, and commonly known and designated as The Dalles Military Road lands, a portion of which lands are embraced in the county of Crook, recently formed, or about to be formed of and from a portion or portions of said Waséo and Grant Counties, saving and
47 excepting therefrom and from the operation of this conveyance certain portions and parcels of said Dalles Military Road lands heretofore sold and conveyed by the said Edward Martin, grantee thereof as aforesaid, in his life-time and by his successors in interest.

The several and respective interests of the several and respective parties of the first part by them respectively herein and hereby conveyed, being subject to the proper and respective proportions of the debts, charges, and expenses belonging thereto respectively.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurt'ances, unto the said parties of the second part, its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

P. DONAHUE.	[SEAL.]	JAS. V. MARTIN.	[SEAL.]
ANNIE DONAHUE.	[SEAL.]	THOS. S. MARTIN.	[SEAL.]
D. V. B. HENARIE.	[SEAL.]	ADA B. MARTIN.	[SEAL.]
MARY A. HENARIE.	[SEAL.]	EDWARD MARTIN.	[SEAL.]
ELEANOR MARTIN.	[SEAL.]	BARTON L. WALKER.	[SEAL.]
P. J. MARTIN.	[SEAL.]	GENEVIEVE E. WALKER.	[SEAL.]
MARGARET A. MARTIN.	[SEAL.]		

Signed, sealed, and delivered in the presence of—

A. Maude Henarie and Eugene W. Levy, as to the signature of Mary A Henarie.

Annie Martin and Eugene W. Levy, as to signature of Margaret A. Martin.

Eugene W. Levy and Charles T. Stanley, as to signatures of P. Donahue and Annie Donahue.

Eugene W. Levy and T. P. Beach, as to signature of D. V. B. Henarie.

Eugene W. Levy and T. P. Beach, as to signature of Eleanor Martin.

Eugene W. Levy and T. P. Beach, as to signatures of P. J. Martin and James V. Martin.

Eugene W. Levy and Charles T. Stanley, as to signature of Edward Martin.

Eugene D. White, Arthur E. Sloan, witnesses to signature of Thomas S. Martin.

Eugene D. White and Arthur E. Sloan, witnesses to signature of Ada B. Martin.

Witnesses to signatures of Barton L. Walker and Genevieve E. Walker, John E. Beal, Albert D. Gilme.

STATE OF OREGON,
County of Multnomah, ss:

Be it remembered that on this 18th day of August, 1884, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named Thomas S. Martin and Ada B. Martin, who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same; and Ada B. Martin, wife of the said Thomas S. Martin, on an examination made by me separate and apart from her husband, acknowledged to me that she executed the same freely and voluntarily, and without fear, coercion, or compulsion from any one.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above written.

[SEAL.] EUGENE D. WHITE,
Notary Public for Oregon.

48 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared James V. Martin and Edward Martin, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared Peter Donahue and Annie Donahue, his wife, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally and duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Annie Donahue, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared D. V. B. Henarie and Mary A. Henarie, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Mary A. Henarie, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San
49 Francisco, State of California, personally appeared P. J. Martin and Margaret A. Martin, his wife, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Margaret A. Martin, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 25th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared Eleanor Martin (widow), to me personally known to be the identical person whose name is subscribed to, who is described in, and who executed the annexed and within instrument, and she duly acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

On the 12th day of September, A. D. 1884, before me, John E. Beall, a commissioner of deeds for the State of Oregon in and for the District of Columbia, duly appointed, commissioned, and sworn, and residing in the city of Washington, D. C., personally appeared Barton L. Walker and Genevieve E. Walker, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Genevieve E. Walker, on examination separate and apart from her said husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOHN E. BEALL,
Commissioner of Deeds for the State of Oregon in and for the District of Columbia.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for said Wasco County, and ex officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from Peter Donahue et al. to the Eastern Oregon Land Company, and bearing date August 11, 1884, as the same now appears of record at pages 119, 120, 121, 122, 123, and 124 of volume J, records of deeds for Wasco County, Oregon, now in my office and custody. And that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 2d day of September, 1887.

[SEAL.] GEORGE H. THOMPSON,
Clerk.
By J. M. HUNTINGTON,
Deputy Clerk.

50 And afterwards, to wit, on the 29th day of August, 1889, there was issued out of said court a subpœna ad respondendum in words and figures as follows, to wit:

51 DISTRICT OF OREGON, *ss:*

I certify that on the 7th day of September, 1880, at The Dalles, Oregon, Wasco County, in said district, I duly served the within copy of subpœna ad respondendum upon the therein named C. N. Thornbury by serving upon his wife at their home, also upon Edward Martin, at the Umatilla House, by delivering to them, personally, a true copy of said subpœna ad respondendum duly certified to by me as U. S. marshal, duly certified to by the clerk of the U. S. circuit court for said district.

JOHN MYERS,
United States Marshal.
By W. W. ROBERTS,
Deputy.

52 DISTRICT OF OREGON, *ss:*

I certify that on the 2d day of Sept., 1889, at Portland, Or., Multnomah County, in said district, I duly served the within subpœna ad respondendum upon the therein named D. V. B. Henarie by serving on J. K. Kelly, who accepted service as attorney for D. V. B. Henarie, by delivering to him, personally, a true copy of said summons duly certified to by me as U. S. marshal.

JOHN MYERS,
United States Marshal.
By C. N. WAIT, *Deputy.*

53 DISTRICT OF OREGON, *ss:*

I certify that on the 2d day of Sept., 1889, at Portland, Multnomah County, in said district, I duly served the within subpœna ad respondendum upon the therein named Eleanor Martin by serving on J. K. Kelly, who accepted service as attorney for Eleanor Martin, by delivering to him, personally, a true copy of said summons duly certified to by me as U. S. marshal.

JOHN MYERS,
United States Marshal.
By C. N. WAIT, *Deputy.*

54 DISTRICT OF OREGON, *ss:*

I certify that on the 2d day of Sept., 1889, at Portland, Multnomah County, in said district, I duly served the within subpœna ad respondendum upon the therein named Eastern Oregon Land Company by serving on J. K. Kelly, who accepted service as attorney for said Eastern Oregon Land Co., by delivering to him, personally, a true copy of said summons duly certified to by me as U. S. marshal.

JOHN MYERS,
United States Marshal.
By C. N. WAIT, *Deputy.*

55 DISTRICT OF OREGON, *ss:*

I certify that on the 31st day of August, 1889, at Portland, Or., Multnomah County, in said district, I duly served the within summons upon the therein named James K. Kelly by delivering to him, personally, a true copy of said summons duly certified to by me as U. S. marshal.

JOHN MYERS,
United States Marshal.
By C. N. WAIT, *Deputy.*

56 DISTRICT OF OREGON, *ss:*

I certify that on the 31st day of Aug., 1889, at Portland, Or., Multnomah County, in said district, I duly served the within summons upon the therein named Dalles Military Road Co. by delivering to president of said company, J. K. Kelly, personally, a true copy of said summons duly certified to by me as U. S. marshal, together with a copy of the complaint in the within entitled suit, duly certified to by the clerk of the U. S. circuit court for said district.

JOHN MYERS,
United States Marshal.
By C. N. WAIT, *Deputy.*

57 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, complainant,
vs.
THE DALLES MILITARY ROAD COMPANY, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, defendants.

No. 1612. In equity.

Subpœna ad respondendum.

The President of the United States of America to The Dalles Military Road Company, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, greeting:

You and each of you are hereby commanded that you be and appear in said circuit court of the United States, at the court-room thereof, in the city of Portland, in said district, on the first Monday of October next, which will be the 7th day of October, A. D. 1889, to answer the exigency of a bill of complaint exhibited and filed against you in our said court, wherein the United States is complainant and you are defendants, and further to do and receive what our said circuit court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said district, or your deputy, to make due service of this our writ of subpœna, and to have then and there the same.

Hereof fail not.

Witness the honorable Melville W. Fuller, Chief-Justice of the Supreme Court of the United States, and the seal of our said circuit court, affixed at Portland, in said district, this 29th day of August, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independance of the United States the one hundred and

[SEAL.]

R. H. LAMSON,
Clerk.

By R. B. LAMSON,
Deputy Clerk.

Memorandum pursuant to equity rule No. 12 of the Supreme Court of the United States:

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken pro confesso.

(Indorsed:) No. 1612. In the circuit court of the United States for the district of Oregon. In equity. The United States vs. Dalles Military Road Co. et al. Subpœna ad respondendum. (Endorsed:) Returned and filed April 17, 1890. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

58 And afterwards, to wit, on the 12th day of September, 1889, there was duly filed in said court a præcipe for appearance of certain defendants, in words and figures as follows, to wit:

59 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
DALLES MILITARY ROAD COMPANY ET AL. } No. 1612.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor in the above-entitled cause for the defendants Dalles Military Road Co., J. K. Kelly, and C. N. Thornbury.

JAMES K. KELLY,
Solicitor for above Defendants.

(Indorsed:) No. 1612. In the circuit court of the United States for the district of Oregon. United States vs. Dalles Military Road Co. et al. Præcipe for appearance of defendants Dalles Military Road Co., J. K. Kelly, and C. N. Thornbury. (Endorsed:) Filed and entered Sept. 12, 1889. R. H. Lamson, clerk, by R. B. Lamson, deputy.

60 And afterwards, to wit, on the 12th day of September, 1889, there was duly filed in said court exceptions to bill, in words and figures as follows, to wit:

61 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, PLAINTIFF,
vs.
THE DALLES MILITARY ROAD COMPANY, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, T. S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, defendants.

Exceptions taken by The Dalles Military Road Company, James K. Kelly, and C. N. Thornbury, three of the above-named defendants, to the bill of complaint of the plaintiff.

These defendants except to all the parts of said bill *of said bill* herein described as being matter not material to said suit, and which can not aid

the plaintiff in obtaining the relief sought by said bill, and prays that they may be expunged with costs, to wit:

First exception. For that said bill is impertinent from and after the word "effect," in the third line of the third paragraph of said bill to the end of said paragraph.

Second exception. For that said bill is impertinent from and after the word "same," in the fourth line of the eighth paragraph of said bill to the end of said paragraph.

Third exception. For that the said bill is impertinent in the sixteenth paragraph by containing the words "and maintained" in the 9th line; also, the words "or maintained" in the 14th line; also, the words "or maintained" in the 18th line; also, the words "or maintained" in the 21st line of said paragraph.

JAMES K. KELLY,
Solicitor for said Defendants.

(Endorsed:) Filed Sept. 12, 1889. R. H. Lamson, clerk.

62 And afterwards, to wit, on the 17th day of September, 1889, there was duly filed in said court, a præcipe for appearance of defendants, in words and figures as follows, to wit:

63 In the circuit court of the United States for the district of Oregon.

UNITED STATES
vs.
DALLES MILITARY WAGON ROAD CO. ET AL. } No. 1612.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor in the above-entitled cause for the defendant.

JAS. K. KELLY,
By C. E. S. WOOD,
Of Counsel.

(Indorsed:) No. 1612. In the circuit court of the United States for the district of Oregon. United States vs. Dalles Military Road Co. et al. Præcipe for appearance of defendants. (Endorsed.) Filed and entered Sept. 17, 1889. R. H. Lamson, clerk. By D. W. Stevens, deputy.

64 And afterwards, to wit, on the 17th day of September, 1889, there was duly filed in said court a petition for leave to file double pleas, in words and figures as follows, to wit:

65 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,
vs.
ELEANOR MARTIN, P. J. MARTIN, D. V. B. Henarie, Mary A. Henarie, Margaret A. Martin, Jas. V. Martin, Thos. S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, defendants.

Your petitioner, the defendants above named, showeth that the complainant having exhibited its bill in this honorable court against your peti-

tioner, and your petitioner having entered their appearance in the above-entitled suit, your petitioner is now advised that it will be inconvenient and against equity and the full administration of justice to be required to plead singly in this suit; that there are several distinct and separate defenses to the entire subject-matter of the bill, which defenses do not involve the expenses, trouble, and delay of making issue on the actual construction of the road and taking testimony in such issue,
66 and your petitioner showeth that he ought to be allowed to enter more than one plea to the bill.

Wherefore your petitioner prays for an order allowing him to plead more than one plea to the bill filed herein, to wit:

1. Bona fide purchase.
2. Delays, laches, and estoppel.
3. Effect of governor's certificate.

JAS. K. KELLY,
Solicitor for Defts.

(Endorsed:) Filed Sept. 17, 1889. R. H. Lamson, clerk.

67 And afterwards, to wit, on the 2d day of October, 1889, there was filed in said court an answer of defendant, Edward Martin, in words and figures as follows, to wit:

68 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, PLAINTIFF,
vs.
THE DALLES MILITARY ROAD COMPANY, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, defendants.

The answer of Edward Martin, one of the defendants, to the bill of complaint of the United States.

This defendant in answer to the said bill says that he has not and does not claim to have any right, title, or interest in any of the matters in question in this suit, and disclaims all right, title, and interest, legal and equitable, in any of said matters, and he further says that if he had been applied to by the plaintiff before the filing of the said bill of com-
69 plaint he would have disclaimed all such right, title, and interest; and he therefore submits that the said bill ought to be dismissed as against him with costs.

EDWARD MARTIN.

STATE OF OREGON, *County of Wasco:*

Edward Martin, the above-named defendant, being duly sworn according to law, says that the foregoing answer, by him subscribed, has been

read to him, and he knows the contents thereof, and the same is true of his own knowledge.

EDWARD MARTIN.

Subscribed and sworn to before me this 1st day of October, A. D. 1889.

B. S. HUNTINGTON,
U. S. Comm'r.

(Endorsed:) Filed Oct. 2, 1889. R. H. Lamson, clerk.

70 And afterwards, to wit, on the 7th day of October, 1889, there was duly filed in said court a præcipe for appearance in words and figures as follows, to wit:

71 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
DALLES MILITARY ROAD CO. ET AL. } No. 1612.

To the clerk of the above entitled court:

You will please enter my appearance as solicitor in the above-entitled cause for the defendants, Eleanor Martin, D. V. B. Henarie, and The Eastern Oregon Land Company.

JAMES K. KELLY.

(Endorsed:) No. 1612. In the circuit court of the United States for the district of Oregon. The United States vs. Dalles Military Road Co. et al. Præcipe for appearance of defendants, Eleanor Martin, D. V. B. Henarie, & E. O. Land Co. (Endorsed), filed and entered Oct. 7, 1889. R. H. Lamson, clerk, by R. B. Lamson, deputy.

72 And afterwards, to wit, on Monday, the 7th day of October, 1889, the same being the 1st judicial day of the regular October term of said court; present the honorable Lorenzo Sawyer, United States circuit judge, presiding, the following proceedings were had in said case, to wit:

73 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
THE DALLES MILITARY ROAD COMPANY ET AL. } No. 1612.

OCTOBER 7, 1889.

This cause was heard upon the motion of certain of the defendants for leave to file more than one plea to the bill herein, and upon the exceptions of the defendants the Dalles Military Road Company, James K. Kelley, and C. N. Thornbury to said bill, and was argued by Mr. Lewis L. McArthur, United States attorney, and Mr. William Carey Johnson, special assistant U. S. attorney, for the plaintiff, and by Mr. James K. Kelly, of counsel for the defendants; on consideration whereof it is ordered that said motion be, and the same is hereby, allowed, and that said exceptions be, and the same are hereby, sustained.

74 And afterwards, to wit, on the 7th day of October, 1889, there was duly filed in said court an opinion by the court in words and figures as follows, to wit:

75 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
THE DALLES MILITARY ROAD COMPANY ET AL. } No. 1612.

1. *Public Lands—Grants—Dalles Military Road.*

MONDAY, *October* 7, 1889.

Act Cong. Feb'y 25, 1867 (14 St. 409), granted to the State of Oregon lands to aid in the construction of a military wagon road from Dalles City to Fort Boise. Section 3 of the act provides that "said road shall be constructed with such width, gradation, and bridges as to permit of its *genular* use as a wagon road, and in such special manner as the State of Oregon may prescribe." By an act passed October 20, 1868, the State of Oregon transferred the grant to the Dalles Military Road Company, but prescribed no "special manner" for constructing the road. Held, that these two acts formed the entire statutory contract with the road company, and that the statute of Oregon, Oct. 14, 1862, relative to the construction of roads by private corporations, which had no reference to this
76 specific road or grant, did effect the question between the United States and the road company as to whether the latter had constructed the road in the manner and within the time as prescribed by the act of Congress.

2. *Same.*

There being nothing in either act requiring the road company, or anyone claiming under it, to maintain the road after it had been once completed and accepted by the Government in accordance with the provisions of the acts, without any such fraud as to violate the acceptance, its rights to the land against the United States vested irrevocably upon such acceptance.

In equity. Bill to forfeit lands. On exceptions to portions of the bill for imputinence.

L. L. M'Arthur, U. S. atty., and W. C. Johnson for plaintiff.

James K. Kelly, C. E. S. Wood, and Dolph & Bellinger for defendants.

Before Sawyer, circuit judge.

SAWYER, J.

The first paragraph of the bill sets out the substance of the act
77 of Congress, passed February 25, 1867, entitled "An act granting lands to the State of Oregon, to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boisé, on the Snake River," found in 14 U. S. St., 409. The second paragraph in like manner sets out the substance of the statute of Oregon, passed October 20, 1868, entitled "An act donating certain lands to Dalles Mili-

tary Road Company," found in the Statutes of Oregon for 1868, p. 3. Notwithstanding these allegations in the second paragraph, it is alleged in the third "that the State of Oregon never, at any time, passed any laws whatsoever for the specific purpose of carrying the act of Congress into effect," meaning only, it must be presumed, in view of the preceding allegations of the bill, that it never passed any law other than that set out, or any law prescribing any "other special manner" of constructing the road than that prescribed in the said act of Congress, as it was authorized to do by section 3 of that act. The bill then proceeds to aver: "But long before the passage of the act of Congress" the State legislature did pass

"an act providing for private corporations, and the appropriation
78 of private property therefor," which act provided that any road constructed by such corporation should be constructed in a certain manner, of a certain width, etc., fully described in the act; also for bridging and ferrying streams, with many other particulars, and that said act has been in force, at all times, since its passage on October 14, 1862.

This passage is excepted to as impertinent, the said statute being, as contended, inapplicable, and having no relation to the road as constructed or required to be constructed by the defendant, the Dalles Company, under and in pursuance of the Congressional grant to the State of Oregon, and the statute of Oregon set out in the bill transferring the said grant to the Dalles company upon the same "conditions and limitations" as in the act of Congress provided, and no others. I am satisfied that this exception must be sustained. Section 3 of the act of Congress provides

"that said road shall be constructed with such width, graduation
79 and bridges as to permit of its regular use as a wagon road, and in such special manner as the State of Oregon may prescribe." Congress was providing for the construction of this particular road, and made no reference to any other road, or to any existing statute of Oregon. It does not say, in "such special manner" as the statutes of Oregon have heretofore provided "for road constructed under its authority and laws," or "in such 'special manner' as the laws of Oregon now provide for the construction of roads, toll or otherwise, by corporations or private parties," but in such other "special manner, as the State of Oregon may prescribe." That is to say, may hereafter prescribe, when regranting the lands to aid in the construction of the road, or in hereafter contracting with parties to construct the road, either for the lands, or for a money consideration, to be paid in whole, or in part, out of the proceeds of the lands. The act of Congress, evidently, contemplates future not past action—such "other special manner" as the State may prescribe
80 for this particular road—not such as it has already heretofore prescribed for other roads, toll or otherwise. This is the only limitation prescribed by Congress in this particular.

Upon examining the statute of Oregon, transferring the Congressional grant to the Dalles Military Road Company, it will be seen that no "special manner" of constructing the road was therein prescribed, and the Dalles Company was not limited to any description of road to be constructed, other than that found in the act of Congress itself. The statute is a special, independent act, limited to the very object named in and contemplated by the act of Congress, and referring to no other road or object. In the preamble it recites the act of Congress *verbatim* in full, and then

provides "that there is hereby granted to the Dalles Military Road Company incorporated * * * * * * all lands, right of way, rights, privileges, and immunities heretofore granted or pledged to this State by the act of Congress, in this act heretofore recited, and for the purpose of aiding said company in constructing the road mentioned and described in said act of Congress upon the conditions and limitations therein
81 prescribed." Laws 1868, p. 5. There is no reference to any prior statute of Oregon, and no description at all of the road to be constructed by the defendant. No "special manner" prescribed; nothing except the description in the act of Congress itself. It simply adopts the provisions of that statute, and by that act the rights of the Dalles Company, so far as governing the land grant under the act of Congress is concerned, are entitled to be judged. This is special legislation relating to a single specific subject-matter, and we are not to import into it other conditions which the legislation itself has omitted to incorporate. As the State of Oregon, in transferring the Congressional grant of land to the defendant in consideration of its building the road, did not prescribe any "special manner" in which it should be built, or any manner other than that prescribed by Congress itself, when the conditions prescribed by the act of Congress were performed within the time limited, the right to the lands became fully and irrevocably vested. The terms of the statutory contract between the State and the Dalles Company are found in
82 the two acts, the act of Congress granting the lands to the State on the conditions alone prescribed in it, and the State act in express terms granting them to the Dalles Company upon precisely the same conditions and limitations, no others having been inserted. The act of the State of Oregon without other conditions therein than those prescribed in the act of Congress, operated as a transfer or assignment to the company of the Congressional grant without restriction, and it was only necessary for the company to perform those conditions, in order to become entitled to the lands. Prior legislation, therefore, upon a subject-matter, having no reference to this specific road, or this specific land grant, cannot effect the question between the United States and these defendants as to whether the road was constructed by the Dalles Company in the manner and within the time prescribed in the act of Congress and the statute of Oregon strictly following the provisions of the act of Congress, without prescribing any future conditions. It may have been necessary for the Dalles Company to perform conditions
83 enjoined by the statutes of Oregon, other than those prescribed by the acts now in question, in order to entitle it to enjoy other rights under other laws of Oregon. But, if so, these conditions, and the independent rights acquired by their performance, are wholly outside of and foreign to this investigation, and with which we have no concern. Our inquiry is limited to the requirements of the statutory contract set out. The first exception must, therefore, be sustained, the matter excepted to being impertinent to this inquiry.

The next exception is to the allegation relating to maintaining the road after construction in case it was constructed in accordance with the act. The allegation is that the road "was not and never has been maintained as a public highway by either or any of the defendants herein, or any person or persons claiming any interest in the lands embraced within the limits

provided for by the said act of Congress," and the other exceptions all relate to similar allegations as to "maintaining the road" after construction; not to a failure to construct the road in accordance with the contract.

84 It is contended that these allegations are impertinent, because the defendants, under the terms of the contract, embodied in the act of Congress and the act of the legislature of the State of Oregon, set out in the bill, were not under any obligation to maintain the road after it had been once constructed in accordance with the terms of the contract; and this view appears to me to be correct, so far as the vesting of the right of the defendant to the lands is concerned. I can find nothing in either act that requires the Dalles Company, or anybody holding under it, to maintain the road after it has been once completed, in accordance with the terms of the statutory contract, and been approved and accepted by the Government through its agent for that purpose, duly appointed by the statute and contract, the parties acting in good faith, and there being no such fraud as should vitiate such approval and acceptance. The lands were granted, in the words of the statute, "to aid in the construction" of the road. "The lands hereby granted shall be exclusively applied to the construction of said road and to no other purpose." After the completion of 10

85 miles a quantity of land, "not to exceed 30 sections, may be sold, and so on from time to time until said road shall be completed." There is nothing said in either act about maintaining the road after its completion. When the road has been completed, honestly approved, and accepted in accordance with the provisions of these two statutes, the contract has been fully executed on the part of the Dalles Company, and the contract having been fully performed, its right to the lands has irrevocably vested. The grant is in præsenti, and there is no provision for forfeiture in case the road is not afterwards maintained. It is provided that if the road is not "completed" within the time prescribed no more lands shall be sold, and those "unsold shall revert to the United States." But no provision is made for their forfeiture for not maintaining the road after completed. The contracting party, after completing the road in pursuance of the terms of the statute, might then abandon it and leave it to the State or the Government, or whoever else may have an interest in it, either to take care of it or allow it to go to destruction, so far as any rights or liabilities under these two statutes are concerned. As well might one who

86 has contracted with a builder for the erection of a house upon certain specifications for a specified price, after the completion of the structure is accordance with the contract and acceptance of the house, require the builder to ever after maintain it in repair.

It must be remembered that we are now, in this suit, dealing with the rights only of these parties—the United States and these defendants—arising out of this statutory contract for the construction of the road in question.

If the Dalles Military Road Company or any of these defendants, after the full performance of this statutory contract and after their right to the land had fully vested under it, assumed to own and control this road, keep it as a toll-road as to all parties other than the United States, or exercised any other rights under other statutes of the State of Oregon, or if any liabilities accrued to the United States, the State of Oregon, or to private parties, arising under other statutes or laws of either the United States or

the State of Oregon, that is a matter wholly foreign to the inquiry now before the court. We are to deal simply with this statutory contract, and even in relation to that, which is the only thing we could under any
87 circumstances deal with, we are limited in our inquiry by the statute under which the suit is brought to three points:

(1) We are to determine the question of seasonable and proper completion of said roads in accordance with the terms of the granting acts, either in whole or in part—not according to the terms of other acts, state or national.

(2) The legal effect of the several certificates of the governors of the State of Orgeon of the completion of said roads, and the right of resumption of said granted lands by the United States.

(3) And we must determine these questions in a manner "saving and preserving the rights of bona fide purchasers of either of said grants, or of any portion of said grants, for a valuable consideration." 25 U. S. St., 851.

There is nothing here said about "maintaining" the roads after construction. Manifestly, Congress in passing this act had no idea that the Dalles Company were required by either or both of the acts in question to maintain the road after completion, in accordance with the statutory contract.

We are only to deal with the statutory contract for constructing
88 the roads and ascertain whether the contract in that particular has been performed wholly or in part, and, if not fully performed, what are the rights of the parties under the governor's certificates, notwithstanding the failure to wholly or in part comply with the contract; and what are the rights of bona fide purchasers if these certificates can be successfully assailed and disregarded so far as participants in the fraud are concerned?

The case of Schuty *vs.* Military Road Co., 7 Or., 264, has been confidently cited as establishing a view different from that now adopted. In that case the question now under consideration was not necessarily or at all involved, and there was no occasion to determine whether the statutory contract was performed in such sense as to entitle the Dalles Company to the lands in question, or whether, under the two acts now in question, considered by themselves, said company was required to maintain the road after completion in accordance with these statutes alone. The instruction under discussion in that case may have been entirely correct under
89 the other general laws of Oregon requiring parties who assume to own or at least control and operate a public road for tolls collected or other proper consideration. Liabilities may well accrue against such parties in favor of the United States, the State of Oregon, or private parties, for their neglects or violations of duty. But, if so, the liability in question did not result alone from a breach of the statutory contract now under consideration, nor did the court so decide. The plaintiff was a private party, carrying the United States mail under a contract with the Government. He did not sue on this statutory contract for a breach either as an original party or as assignee of the United States. The United States were in no sense parties to the suit. The suit was for a breach of duty to maintain the road under the laws of Oregon, and the statutes in question were drawn in to show a right to use the road without charge.

But if the court intended to assert—which I do not think it did—that this statutory contract alone required the Dalles Company to maintain this road after it had been completed according to the contract and accepted, then I can not concur in that view. That case might have been, indeed
90 should have been, and it doubtless was disposed of upon entirely different considerations; upon the rights of the parties arising out of an assumption on the part of the company to own and control the road and to collect tolls thereon under other laws of Oregon. The right to collect tolls is a franchise granted only by the State. There was no such franchise granted by the acts in question. The case shows that it was decided in 1879, and arose many years after the road was required to be completed by the act of Congress of 1867 in question; that the defendant therein was a corporation organized under the laws of Oregon "for the purpose of constructing and maintaining" the road "and collecting tolls thereon" (7 Or., 259); "that it neglected to construct or maintain the road in accordance with the said acts of Congress and of the legislature of Oregon" (Id., 260), and the answer admits the incorporation to build the road and "collect tolls" (Id., 261). Manifestly, then, the corporation was in the exercise and enjoyment of other franchises and different rights than those
91 derived under the acts of Congress and legislation of Oregon, now in question, for neither of those acts makes any reference whatever to any such franchise or rights, and other laws of Oregon were properly before the court for consideration in that case, and doubtless it was upon these laws that the opinion of the court was predicated. There seems to be some confusion of ideas in the theory upon which that case was presented. The two acts now under consideration, constituting a statutory contract for the construction of this road, have no necessary connection with that case, except so far as to exempt the United States from tolls, unless by virtue of other statutes in no wise affecting the contract with which we are dealing and the rights of the United States and these defendants under it. That road might just as well have been constructed under the acts in question by any other corporation or private individual had the grant been assigned to them, and, having been completed and accepted and the
92 contractor having afterwards withdrawn, the Dalles Military Road Company might then have taken possession of the completed road under other statutes of Oregon and kept and maintained it as a toll road, in the management of which many obligations and liabilities might have arisen having no relation whatever to the acts and statutory contract for the mere construction of the roads. There is no necessary connection whatever between this statutory contract and its performance or nonperformance and the maintaining and operating of this road as a toll road after its completion and acceptance, either by the parties constructing it or others; and the rights of the United States and the defendants, under these specific statutes, can not in any way be affected by the arrangement between the State and the Dalles Company and its grantees made under other statutes, having no special reference to the construction of the road under the acts in question. The rights resting upon different statutes must stand or fall upon the statutes applicable to the specific subject-matter, and can
93 neither be aided nor impaired by other acts, having no relation to them. The one class should not be confounded with the other. Undoubtedly this road, having been constructed under the act of Congress,

the State could not impose or authorize others to impose tolls or other charges upon the United States, or prevent its use, free from tolls or other charges, by the Government for the transportation of any property, troops, or mails. The supreme court of Oregon, therefore, might very properly have affirmed the correctness of the charge given in the case cited upon other statutes of Oregon, either alone or in conjunction with the act of Congress in question, without at all considering the questions now before the court as to what is required to be done by the Dalles Company by the statutory contract now under consideration unaffected by other statutes.

The questions in the two cases are entirely distinct, and should not be confounded.

Upon the views expressed all the exceptions to the bill for im-
94 pertinence must be sustained, and it is so ordered.

(Signed.) SAWYER,
Circuit Judge.

UNITED STATES
vs.
OREGON CENT. MILITARY ROAD CO. ET AL.

Circuit court, D. Oregon, October 7, 1889.

Per curiam: Similar questions are presented in this case, and the exceptions must be sustained upon the same grounds.

(Endorsed:) Filed Oct. 7, 1889. R. H. Lamson, clerk.

95 And afterwards, to wit, on the 17th day of October, 1889, there was duly filed in said court an answer of defendant, Margaret A. Martin, in words and figures as follows, to wit:

96 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, PLAINTIFF,
vs.
THE DALLES MILITARY ROAD COMPANY, James K. Kelley, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, defendants.

The answer of Margaret A. Martin, one of the defendants to the bill of complaint of the United States.

This defendant, in answer to the said bill, says that she has not, and does not claim to have, any right, title, or interest in any of the matters in question in this suit, and disclaims all right, title, and interest, legal and equitable, in any of said matters; and she further says that if she had been applied to by the plaintiff before the filing of the said bill of com-
97 plaint she would have disclaimed all such right, title, and interest; and she therefore submits that the said bill ought to be dismissed as against her with costs.

MARGARET A. MARTIN.

STATE OF CALIFORNIA,
City and County of San Francisco:

The above-named defendant, being duly sworn according to law, says that the foregoing answer by her subscribed has been read by her, and she knows the contents thereof, and the same is true of her own knowledge.

MARGARET A. MARTIN.

Subscribed and sworn to before me this 14th day of October, 1889.
[NOTARIAL SEAL.] J. C. KING,
Notary Public.

Service of the within answer accepted by receiving a copy thereof Oct. 17th, 1889.

U. S. Attorney.

(Endorsed:) Filed Oct. 17th, 1889. R. H. Lamson, clerk, by P. B. Lamson, deputy.

98 And afterwards, to wit, the 17th day of October, 1889, there was duly filed in said court a plea of defendants, D. V. B. Henarie et al., in words and figures as follows, to wit:

99 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, PLAINTIFF,
vs.
THE DALLES MILITARY ROAD COMPANY, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, defendants.

The joint and several plea and accompanying answer of the defendants, D. V. B. Henarie, Eleanor Martin, P. J. Martin, and the Eastern Oregon Land Company, defendants to the bill of complaint of the United States, complainant. These defendants, by protestation not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged for plea to the whole of the said bill, or to so much and such part of the said bill as prays that the land granted to the State of Oregon by the act of Congress of date February 25, 1867, and now owned by these defendants, be decreed forfeited to the United States.

That George L. Woods, then the governor of Oregon, without any false or fraudulent representations having at any time been made to him by the officers, stockholders, or agents of The Dalles Military Road Company, or any other person or persons in its or their interest, and without any one or more of them having falsely or fraudulently induced him to certify that the road of said company was constructed in accordance
100 with law; and without any fraud whatever on his part, on the 23d day of June, 1869, certified that the plat or map of The Dalles Mil-

itary Road had been filed in his office by The Dalles Military Road Company and showed the location of the line of route as actually surveyed, and upon which its road had been constructed, in accordance with the requirements of the act of Congress approved February 25, 1867, entitled "an Act granting land to the State of Oregon to aid in the construction of a military wagon road from Dalles City on the Columbia River, to Fort Boisé, on Snake River;" and also with an act of the legislative assembly of the State of Oregon, approved October 20, 1868, entitled "An act donating certain land to Dalles Military Road Company."

That he had made a careful examination of said road since its completion and that the same was built in all respects as required by the above recited acts, and that said road was then accepted, as will more fully appear by said certificate of the governor of Oregon, a copy of which is set forth in paragraph five (5) in the bill of complaint and made a part of this plea.

That on the 31st of May, 1876, The Dalles Military Road Company, for a valuable consideration, to wit, the sum of $125,000 to it paid by Edward Martin, of San Francisco, in the State of California, sold and conveyed all the said lands belonging to it to said Edward Martin, his heirs and assigns.

101 That by sundry mesne conveyances from the said Edward Martin to the Eastern Oregon Land Company, one of these defendants, the title to said lands became and now is vested in said Eastern Oregon Land Company.

II.

And for a second plea filed by leave of the court, these defendants say:

That on June 23, 1869, the governor of Oregon certified that the plat or map or The Dalles military road had been duly filed in the executive office; that it showed the location of the line of route upon which said road was constructed in accordance with the requirements of the act of Congress approved February 25, 1867, entitled "An act granting land to the State of Oregon to aid in the construction of the military wagon road from Dalles City on the Columbia River to Fort Boise on Snake River," and with the act of the legislative assembly of the State of Oregon approved October 20, 1868, entitled "An act donating certain land to The Dalles Military Road Company."

And the governor of Oregon then further certified that he had made a careful examination of said road since its completion, and that the same was built in all respects as required by the said above recited acts, and was then accepted, as will more fully appear by the fifth (5) paragraph of the said bill of complaint.

That on December 18, 1869, the Commissioner of the General Land Office withdrew from sale the odd-numbered sections within three miles from each side of the said road in favor of the Dalles Military Road Company.

102 That Congress, by an act approved June 18, 1874, entitled "An act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases," provided that in all cases where lands had been granted by Congress to the State of Oregon to aid in the construction of certain military wagon roads; and the certificate of the gov-

ernor of Oregon should show that any such road has been constructed and completed as in said acts required, patents should be issued in due form to the State of Oregon for such lands, unless the State should by public act have transferred its interest in such lands to any corporation, in which case the said lands were to be patented to such corporation, as will more fully appear by the eleventh (11) paragraph of the bill of complaint.

That Edward Martin, then a resident of San Francisco, in the State of California, placing confidence in the truth of the certificate of the governor of the State of Oregon, dated June 23, 1869, that the said road had been duly constructed according to the requirements of the said act of Congress approved February 25, 1867; and also placing confidence in the order of the Commissioner of the General Land Office, dated December 28, 1869, withdrawing the said lands from sale in favor of The Dalles Military Road Company; and also believing that the said act of Congress approved June 18, 1874, would be carried into effect by issuance of patents to The Dalles Military Road Company for all of said lands, did, on the 31st day of May, 1876, purchase in good faith for a valuable consideration, to wit, the sum of $125,000, then paid by said Edward Martin to said Dalles Military Road Company, all the lands embraced
103 in the grant to said company, except such portions thereof as had previously been sold by it. That previous to the time of paying the sum of $125,000 purchase money, and receiving said deed, the said Edward Martin had no notice of any failure on part of The Dalles Military Road Company to construct and complete the said road, in accordance with the requirements of said act of Congress approved February 25, 1867, and he had no reason to believe that the same was not constructed in accordance with the said act of Congress, but, on the contrary, he was informed and believed that said road had been constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road.

That thereupon the said Edward Martin became and was the bona fide purchaser, for a valuable consideration, of all said lands then owned by The Dalles Military Road Company, which were then conveyed to him by said corporation, as will more fully appear by its deed, a copy of which is attached to the bill of complaint marked Exhibit B, and dated May 31, 1876.

That the said Edward Martin afterwards, to wit, on January 31, 1877, executed and delivered to D. V. B. Henarie, one of the defendants, a deed of trust, wherein he acknowledged that said D. V. B. Henarie was the owner of the undivided fourth of all the lands mentioned and described in said deed of The Dalles Military Road Company to said Edward Martin, and that he held the same in trust for said D. V. B. Henarie, which deed of trust was recorded in Wasco County, State of Oregon, on May 7, 1884, in vol. A, page 265, in miscellaneous records; also in Baker County, Oregon, on May 10, 1884, in vol. 2, page 317, in record of leases and
104 agreements, and also in Grant County, Oregon, on May 27, 1884, in book A, page 584, of miscellaneous records.

That when said Edward Martin purchased said lands on May 31, 1876, as hereinbefore stated, said D. V. B. Henarie paid the one-fourth of the consideration for the same, to wit, one-fourth of $125,000. That he made said purchase in good faith, relying upon the certificate of the governor of Oregon that said road had been constructed according to the act of Con-

gress approved February 25, 1867, and also relying upon the act of Congress approved June 18, 1874, that patents in due form of law would be issued to The Dalles Military Road Company for said lands. That he had no notice at the time he paid one-fourth of said purchase money, and when said deed was executed and delivered to said Edward Martin, that said road had not been constructed and completed by The Dalles Military Road Company, as required by said act of Congress of February 25, 1867.

That afterwards, to wit, on the 12th day of May, 1880, the said Edward Martin died intestate in the city of San Francisco, in the State of California, leaving a widow, the defendant, Eleanor Martin, and leaving as his heirs at law Thomas S. Martin, Edward Martin, and Sarah A. F. Wilcox, who were then of lawful age, and James V. Martin, Genevieve E. Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, who were then minors. That in March, 1882, the interest of said minors in said lands, was sold at a guardian's sale, by order of the county court of Wasco County, Oregon, at which sale the interest of said minors in said lands was purchased in good faith for the valuable consideration by
105 Peter Donahue and James Phelan, of San Francisco, California, as will more fully appear by Exhibit C attached to the bill of complaint. That on August 3, 1882, the said James Phelan sold his interest in said lands to Peter Donahue, as will more fully appear by Exhibit B, attached to the bill of complaint.

That on the 11th day of August, 1884, all of the heirs of said Edward Martin, and all persons who held an interest by purchase in said lands, to wit: P. J. Martin, Eleanor Martin, D. V. B. Henarie, Peter Donahue, Edward Martin, James V. Martin, Thomas S. Martin, Genevieve E. Walker, and Joseph W. Winans sold, and by deed conveyed all their interest in the said lands and land grant, to the Eastern Oregon Land Company, a corporation duly organized and incorporated under the laws of the State of California, having its office in the city of San Francisco, in the State of California, as will more fully appear by Exhibit "E," attached to the bill of complaint.

That the Eastern Oregon Land Company now holds the legal title to all the said lands granted to the Dalles Military Road Company, except such as have heretofore been sold and conveyed by the Dalles Military Road Company and its grantees and the said Eastern Oregon Land Company.

All which matters and things these defendants do aver to be true, and they plead the said matters in bar to the plaintiff's bill of complaint, and pray the judgment of this honorable court whether they ought to be required to make any other or further answer to said bill, and pray to be hence dismissed with their costs and charges in that behalf wrongfully sustained.

JAMES K. KELLY,
Solicitor for Defts.

106 UNITED STATES OF AMERICA, *District of Oregon:*

I, James K. Kelly, of counsel for the above-named defendants, do hereby certify that in my opinion the foregoing plea of said defendants is well founded in point of law.

JAMES K. KELLY,
Solicitor for Defts.

STATE OF CALIFORNIA,
County of San Francisco, ss:

We, D. V. B. Henarie, Eleanor Martin, P. J. Martin, and D. V. B. Henarie, president Eastern Oregon Land Company, being duly sworn according to law, do say that we are defendants in the above-entitled suit, that the foregoing plea is not interposed for delay, and that it is true in point of fact.

D. V. B. HENARIE,
ELEANOR MARTIN,
P. J. MARTIN,
D. V. B. HENARIE,
Pres't Eastern Oregon Land Company.

Sworn to before me this 12th day of October, 1889.
[SEAL.] J. D. MONCTON,
Deputy Clerk and Commissioner U. S. Circuit Court, Northern District California.

(Endorsed.) Filed Oct. 17, 1889. R. H. Lamson, clerk.

107 And afterwards, to wit, on the 17th day of October, 1889, there was duly filed in said court an answer of defendants, D. V. B. Henarie, et al., in support of plea, in words and figures as follows, to wit:

108 In the circuit court of the United States for the District of Oregon.

THE UNITED STATES, PLAINTIFF,
vs.
THE DALLES MILITARY ROAD COMPANY, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, defendants.

To the honorable the judges of the circuit court of the United States for the district of Oregon.

The answer of Eleanor Martin, P. J. Martin, and D. V. V. Henarie, and the Eastern Oregon Land Company, defendants in the above-entitled suit, to the bill of complaint of the United States, complainant, accompanying the plea of these defendants, and fortifying the same and not waiving the plea.

109 These defendants, now and at all times hereafter saving to themselves all and all manner of exceptions or otherwise that may or can be taken to the many errors, uncertainties, and imperfections in the said plaintiff's bill contained, for answer thereto, or to so much thereof as these defendants are advised it is necessary or material for them to make answer to, answering say:

In answer to paragraph I of the said bill, these defendants admit that all the allegations therein contained are true.

In answer to paragraph II of said bill, these defendants admit that all the allegations therein contained are true.

In answer to paragraph III of said bill, these defendants admit that all the allegations therein contained are true; but they deny that the said act of the legislative assembly of the State of Oregon approved October 14, 1862, had any application to the manner of constructing the wagon road of the Dalles Military Road Company.

In answer to paragraph IV of the said bill, these defendants admit that all the allegations contained therein are true.

In answer to paragraph V of the said bill, these defendants admit that the governor of Oregon, on the 23rd day of June, 1869, made and executed the certificate copied in the said paragraph; but they say they have no knowledge or information upon the subject, but they believe that neither on the first day of January, 1869, nor on divers days between that day and the 23rd day of June, 1869, nor at any other time, the officers, stockholders, or agents of the Dalles Military Road Company, or any one of them, or any other person or persons acting in their interest or in the interest of the said company, falsely or fraudulently represented to
110 George L. Woods, then the governor of Oregon, or to any other person, that said road had been constructed as by law required, or that they, the said officers, stockholders, agents, and representatives, and any other persons aforesaid, or any one or more of them, then or there, or at any time knew that any such representations were false, or that the said road had not been constructed according to law. And these defendants believe that no such false or fraudulent representations as alleged in the said bill were ever made by any of the said officers, stockholders, agents, and representatives of the Dalles Military Road Company, or any person or persons in its behalf for the purpose of fraudulently procuring from the said George L. Woods, governor of Oregon, any certificate declaring that the said road had been constructed in accordance with the act of Congress approved February 25, 1867, and the act of the legislative assembly of the State of Oregon, approved February 20, 1868.

And these defendants deny that the certificate of George L. Woods, governor of Oregon, a copy of which is set forth in paragraph V of said bill was made and issued through any false or fraudulent representations by the officers, stockholders, or agents of the Dalles Military Road Company, or of any person or persons in its interest, as alleged in said paragraph V of said bill.

In answer to paragraph VI of said bill, these defendants deny the allegations contained therein; and they say that the Dalles Military Road Company had on and prior to the said 23d day of June, 1869, a road upon the line of route located and surveyed by said company, and within the limits of the grant of land, constructed and completed according
111 to the requirements of the act of Congress approved February 25, 1867, and this the governor of Oregon, George L. Woods, well knew from an examination thereof made by him and by due and sufficient proof to his satisfaction.

In answer to paragraph VII of the said bill, these defendants say they believe that said certificate was not procured by the Dalles Military Road Company through or by any false or fraudulent representations made by the officers, stockholders, agents, or any person or persons connected with

or in the interest of the said company in order to enable it falsely or fraudulently or in any way to obtain possession and control of the lands lying within the limits of the land grant provided in said act of Congress. And deny that the acceptance of said wagon road by the governor of Oregon was a fraud upon the United States; and, on the contrary, these defendants say that the said road was constructed as required by law and fairly accepted by the governor of Oregon as before stated.

In answer to paragraph VIII of the said bill, these defendants say that the said road was constructed in whole through its entire length, with such width, gradation, and bridges as to permit of its regular use as a wagon road, and so as to be a public highway, and permit the transportation of property, troops, and mails of the United States over the same. And these defendants deny that they were ever required by law to maintain the same as a public highway by any law of Congress or by any act of the legislative assembly of the State of Oregon.

112 In answer to paragraph IX of the said bill, these defendants say that in the construction of the road of the Dalles Military Road Company there was expended by that company and the Dalles and Boisé Wagon Road Company, its immediate predecessor and vendor, and by persons from whom the Dalles Military Road Company purchased portions of its road, in all about eighty thousand dollars, and that the lands granted to the said company in pursuance of the said act of Congress, to aid in the construction of said road, were applied to the reimbursement of the moneys so expended in the construction of said road.

In answer to paragraph X of the said bill, these defendants say that the bonds granted by the said act of Congress were disposed of for the purpose of reimbursing The Dalles Military Road Company and its stockholders for money expended in the construction of the said road as hereinbefore stated.

In answer to paragraph XI of the said bill these defendants admit that the allegations contained therein are true.

In answer to paragraph XII of the said bill these defendants admit that patents for a portion of the lands included in the grant made by said act of Congress were issued to The Dalles Military Road Company, and they believe the amount or number of acres specified in Exhibit "A" attached to the bill, to wit, $126{,}910\frac{23}{100}$, is correct. But these defendants deny that on the 19 day of June, 1876, or at any other time, the President of the United States or any other officer of the Government was deceived, misled, or imposed upon by the false or any false and fraudulent certificates hereinbefore set forth, and was thereby induced to issue the said patent or patents; and these defendants say that the said patents were fairly and properly issued to the said Dalles Military Road Company.

113 In answer to paragraph XIII of the said bill, these defendants admit that all the allegations contained therein are true.

In answer to paragraph XIV of the said bill, these defendants admit that the allegations contained therein are true.

In answer to paragraph XV of the said bill, these defendants say that the same is not a correct statement of the length of the said road. That the said road was surveyed after its completion, to wit, between April 22nd and May 17, 1869, by David P. Thompson, and the length of said road from the court-house in Dalles City to Fort Boisé, on Snake River, was $330\frac{1}{2}$ miles.

This, and the time when the survey was commenced and ended, appears by the certificate on the map made by said D. P. Thompson. And these defendants deny that the Dalles Military Road Company inequitably claims the right to have a patent issued for all the land embraced within said grant not already patented to it.

In answer to paragraph XVI of the said bill, these defendants say that neither any one or more of them, nor the said Edward Martin, deceased, nor any person or persons holding title to the said lands through or under him, or to any portion of said lands at the time of the execution and delivery of the said deeds, or any one or more of said deeds, specified in the bill of complaint or the exhibits thereto attached, had full knowledge or any knowledge whatever that the road provided for by said act of Congress, approved February 25, 1867, had not at any time been constructed as required by the said act of Congress and the act of the legislative assembly of the State of Oregon, approved October 20, 1868, so as to be in
114 any sense whatever a public highway, or so that it could be used by the United States, or by any of the citizens or residents thereof, as a public highway, or so that the United States could transport its property, troops, or mails over the same. And they deny that they or any of them, or that the said Edward Martin, deceased, had full or any knowledge that no grades had been established, that no clearing had been done on any part thereof, no bridges built over any streams on the line thereof, and no cuts made, and no turnouts constructed anywhere on the line of road by the Dalles Military Road Company. And they deny that they or any of them had full or any knowledge that said road was not begun nor completed within five years from the date of the passage of said act of Congress, approved February 25, 1867, or that it had never been begun or constructed. And they deny that they or any of them well knew or knew at all that the statements made in the certificate of the governor of Oregon, hereinbefore set forth, were false, or that the governor did not at any time whatsoever examine the road referred to in his certificate, or that the said certificate had been procured by false or fraudulent representations, or that the patent aforesaid was found to be issued upon said false and fraudulently procured certificate.

And these defendants further answering say they are informed and believe that the said road of the Dalles Military Road Company was constructed over its entire length with such width, gradation, and bridges as to permit of its regular use as a wagon road; that soon after the act of the legislative assembly of October 20, 1868, was passed, conferring
115 upon said company the rights, privileges, and grant of lands to aid in the construction of said road, the Dalles Military Road Company entered upon the work of constructing and completing the same; that when the said road was accepted by the governor of Oregon, as hereinbefore set forth, and for more than a year before that time, large wagons, loaded with three to five tons of freight to each wagon and drawn by three to four spans of horses or mules and often by five to six yoke of oxen, would go from Dalles City to Canyon City, a distance of about one hundred and eighty miles; that these teams would go from Cross Hollows to Canyon City over the road of the Dalles Military Road Company, a distance of about miles; that in making the trip these teams would meet returning teams and pass them without difficulty; that all the goods,

wares, and merchandise used and consumed in the mining camps in and around Canyon City and its vicinity were hauled over said military road from Cross Hollows to Canyon City, as well as goods, wares, and merchandise used by settlers, farmers, &c., on the line of said road; that all the supplies used by the U. S. troops stationed at Camp Watson, Camp Harney, and Camp Logan, in Grant County (except such as were procured in the vicinity of said military posts), were hauled or packed over a great portion of said military road; that the United States mails were carried on said road from Cross Hollows to Canyon City in passenger coaches drawn by four horses, and made regular trips, sometimes twice and sometimes three times a week, and returned in the same way.

116 And these defendants further say that from and after the time when the Dalles Military Road Company became entitled to the said grant of land by virtue of the act of the legislative assembly approved October 20, 1868, the said road has remained a public highway for the use of the Government of the United States, free from tolls or other charges upon the transportation of any and all property, troops, or mails of the United States; and that no tolls were ever collected by the Dalles Military Road Company from the United States since the said 20' day of October, 1868.

And these defendants deny all and all manner of unlawful combination and confederacy with which they are charged in said bill, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in their behalf wrongfully sustained.

D. V. B. HENARIE.
ELEANOR MARTIN.
P. J. MARTIN.
D. V. B. HENARIE,
President Eastern Oregon Land Company.

Attest:
T. P. BEACH,
Secretary E. O. L. Co.

JAMES K. KELLY,
Solicitor for Defts.

117 STATE OF CALIFORNIA,
County of San Francisco, ss:

The answer of the defendants, The Eastern Oregon Land Company, was taken this 12th day of October, 1889, before me, under the common seal of the said corporation, as by their said seal, thereto attached, appears.

J. D. MONCTON,
Deputy Clerk and Commissioner, U. S. Circuit, Northern District of California.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this 12th day of October before me personally appeared D. V. B. Henarie, Eleanor Martin, P. J. Martin, and D. V. B. Henarie, president of the Eastern Oregon Land Company, and made oath that they have heard the foregoing answer read and know the contents thereof, and that the matters and things set forth therein, so far as it relates to their own acts, are true, and, so far as it relates to the acts of others, they believe the same to be true.

And said D. V. B. Henarie, on oath, further says that he is president of the Dalles Military Road Company, one of the defendants, and is familiar with its business affairs; that the facts set forth in the foregoing answer, so far as the same are stated on his personal knowledge, are true;
118 and so far as not stated upon his personal knowledge he believes the same to be true.

Before me this 12th day of October, 1889.
[SEAL U. S. CIR. COURT NORTHERN DIST. CAL.]
J. D. MONCTON,
Deputy Clerk and Commissioner, U. S. Circuit Court, Northern District California.

(Endorsed.) Filed Oct. 17, 1889. R. H. Lamson, clerk.

119 And afterwards, to wit, on Wednesday, the 23d day of October, 1889, the same being the 15th judicial day of the regular October term of said court; Present: the Honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in said case, to wit:

120 In the circuit court of the United States for the ninth judicial circuit, district of Oregon.

THE UNITED STATES
vs.
THE DALLES MILITARY ROAD COMPANY et al. } No. 1612.

OCTOBER 23D, 1889.

Now, at this day, on motion of Mr. James K. Kelley, of counsel for certain of the defendant, it is ordered that said defendants be, and they are hereby, allowed to amend their pleas heretofore filed by interlineation.

121 And afterwards, to wit, on the 25th day of October, 1889, there was duly filed in said court an answer of defendants, Dalles Military Road Co. et al., in words and figures as follows, to wit:

122 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, PLAINTIFF,
vs.
THE DALLES MILITARY ROAD COMPANY, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Marton, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, defendants.

To the honorable the judges of the circuit court of the United States for the district of Oregon.

The answer of the Dalles Military Road Company, and of James K. Kelly, president, and C. N. Thornbury, secretary of said company, to the bill of complaint of the United States, plaintiff.

These defendants now, and at all times hereafter, saving to themselves all and all manner of exceptions or otherwise that may or can be taken to the many errors, uncertainties, and imperfections in the said plaintiff's bill contained for answer thereto, or to so much thereof as these
123 defendants are advised, it is necessary or material for them to make answer to, answering say:

In answer to paragraph I of the said bill, these defendants admit that all the allegations therein contained are true.

In answer to paragraph II of the said bill, these defendants admit that all the allegations therein contained are true.

In answer to paragraph III of said bill, these defendants admit that all the allegations therein contained are true; but they deny that the said act of the legislative assembly of the State of Oregon approved October 14, 1862, had any application to the manner of constructing the wagon road of The Dalles Military Road Company.

In answer to paragraph IV of the said bill, these defendants admit that all the allegations contained therein are true.

In answer to paragraph V of the said bill, these defendants admit that the governor of Oregon on the 23d day of June, 1869, made and executed the certificate copied in the said paragraph; but they say they have no knowledge whatever of any false or fraudulent representations charged in the said paragraph in connection with the procuring of said certificate from the governor of Oregon. And these defendants believe that neither on the first day of January, 1869, nor on divers days between that day and the 23d day of June, 1869, nor at any other time, the officers, stockholders, or agents of The Dalles Military Road Company, or any one of them, or any other person or persons acting in their interest, falsely or fraudulently represented to George L. Woods, then the governor of Ore-

gon, that said road had been constructed as by law required; or that they, the said officers, stockholders, agents, and representatives, or any
124 one of them, or any other person or persons, then or at any time knew that any such representations were false, or that the said road had not been constructed according to law. And these defendants believe that no such false or fraudulent representations as are alleged in said paragraph were ever made by any one of said officers, stockholders, agents, or representatives of The Dalles Military Road Company, or by any person in its behalf, for the purpose of fraudulently procuring from the said George L. Woods, governor of Oregon, any certificate declaring that the said road had been constructed in accordance with the said act of Congress approved February 25, 1867, and the said act of the legislative assembly of the State of Oregon approved February 20, 1868. And these defendants deny that the certificate of George L. Woods, governor of Oregon, a copy of which is set forth in paragraph five of said bill, was made through any false or fraudulent representations by the officers, stockholders, or agents of The Dalles Military Road Company, or by any person or persons in its interest as alleged in paragraph five of said bill.

In answer to paragraph VI, of said bill, these defendants deny the allegations contained therein that The Dalles Military Road Company had not at any time whatsoever constructed or caused to be constructed a road upon any line of route located or surveyed by said company or any other corporation, person or persons, anywhere within the limits of the grant of land provided in the act of Congress aforesaid; and, on the contrary, they say that The Dalles Military Road Company had on and prior to the said 23d day of June, 1869, a road upon the said line of route, located and surveyed by said company within the limits of said grant of land, completed from Dalles City on the Columbia River to Fort Boise on Snake River, and constructed according to the requirements of the
125 act of Congress approved February 25, 1867, with such width, gradation, and bridges, as to permit of its regular use as a wagon road.

That the said road was made in the following manner: On June 15, 1863, articles of incorporation were filed in the office of the county clerk of Wasco County, Oregon, to incorporate "The Dalles and Boise Road Company" for the purpose of constructing a wagon road from Dalles City, in Wasco County, to the Boise mines, in Idaho Territory, with a capital stock of $20,000, divided into four hundred shares of $50 each. Said company was organized by the subscription of the capital stock, and the election of a board of directors, who soon thereafter proceeded to construct said road, commencing at a place known as Cross Hollows, on the line of route toward Canyon City. That said company contracted with different persons to make portions of said road between Cross Hollows and Canyon City, by way of Camp Watson; and with other parties to make that portion of it from Canyon City to Snake River. That as early as the fall of 1864 The Dalles and Boise Road Company had made a passable road so as to enable teams of horses and wagons to go over it and haul freight from Cross Hollows to Canyon City, a distance of about one hundred and forty miles.

The said Dalles and Boise Road Company continued to work on said road, and improve its condition, until 1866, and expended upon it all

the available capital of said company, as well as all the tolls collected from persons passing over said road with teams, carrying freight, coaches, and other vehicles. That in 1866 the said company became finan-
126 cially embarrassed and judgments were obtained against it for work and labor done on the said road, and supplies furnished and for provisions for workmen, tools, and other necessary supplies.

That on July 1, 1865, Howe & Booth obtained a judgement against said company in the circuit court for Wasco County for $445.25 and $73.69 costs.

That on February 5, 1867, Block and Miller obtained a judgement against said company in the county court of Wasco for 291\frac{74}{100}$.

That on June 10, 1867, W. G. Colby obtained a judgement in the circuit court for Wasco County for $118.32 and costs.

That on October 7, 1867, Wait and Kelly obtained a judgement in the county court of Wasco County for $182.80 and costs.

That there were divers other small claims against The Dalles and Boise Road Company, which it was unable to pay on account of its insolvent condition.

That on June 6, 1866, by virtue of an execution issued on the judgement of Howe and Booth to the sheriff of Wasco County, the said sheriff sold to N. H. Gates, J. R. Robbins, and C. S. Miller all that part of The Dalles and Boise road lying in Wasco County, commencing at Cross Hollows and running thence east to the line between Wasco and Grant Counties, a distance of seventy-four (74) miles, more or less, for the sum of six hundred and five dollars ($605.00), subject to redemption.

That on May 25th, 1867, by virtue of an execution issued on the judgement of Block and Miller to the sheriff of Grant County, the said sheriff sold to Block and Miller all that portion of The Dalles and Boise Road lying in Grant County for three hundred and thirty-six dollars ($336.00), subject to redemption.

127 That on January 18, 1868, Kelly and Wait, being lien creditors, redeemed from sheriff's sale that portion of said road lying in Wasco County, sold for ($605.00) six hundred and five dollars, by paying to said sheriff the sum of eight hundred and ninety-three dollars ($893.00) for N. H. Gates, J. R. Robbins, and C. S. Miller, the purchasers at sheriff's sale.

That on the 18th of January, 1868, Victor Trevitt, the assignee of the said judgement of W. G. Colby, being a lien creditor, redeemed from sheriff's sale, that portion of said road lying in Grant County, sold to Block and Miller for three hundred and thirty-six dollars ($336.00) by paying to the sheriff the sum of three hundred and ninety dollars ($390.00) for said Block and Miller.

That soon after the said redemptions took place a compromise of all parties interested in the said road, whether as purchasers at sheriff's sales, or redemptioners, or persons having claims against The Dalles and Boise Road Company, was effected. And it was then agreed among them to reorganize the said company under a new name by increasing the capital stock to one hundred thousand dollars ($100,000) to be apportioned among the several parties interested, who were to become subscribers to the stock of the reorganized corporation. That in pursuance of this arrangement

articles were filed on March 9, 1868, incorporating The Dalles Military Road Company with a capital stock of one hundred thousand dollars ($100,000); that on March 10, 1868, the full amount of stock was subscribed and the corporation duly organized.

That the road-bed of The Dalles and Boise Road Company and all its other property was then turned over to the newly organized corporation and The Dalles Military Road Company commenced operations by levying assessments on the stockholders to raise funds to construct and
128 complete its road; that a force of laborers was placed on that part of the road from Cross Hollows to Canyon City during the year 1868, and at the end of the year that portion of the road, consisting of one hundred and forty miles, was completed, so as to be a public highway, constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road.

Defendants further say that in 1864 and 1865 The Dalles and Boise Road Company did a large amount of work in the construction of that part of its road lying east of Canyon City and between that place and Snake River, and incurred indebtedness to John P. Booth and Thomas Howe, the contractors for building the same, which it was unable to pay in full. That an agreement was then entered into between said corporation and said Booth and Howe that it would lease to them that part of its road lying between Canyon City and Snake River for years with the privilege of collecting for their own use all the tolls to be charged for teams hauling freight, stages coaches and other vehicles, horses, mules, oxen, etc., and in consideration of this right and privilege granted to them by the said Dalles and Boise Road Company, the said Booth and Howe agreed to complete that part of said road and keep the same in repair as a wagon road fit for public travel. That this lease continued to remain in force until after the reorganization of that corporation under the name of The Dalles Military Road Company, as hereinbefore set forth.

That in March, 1869, The Dalles Military Road Company entered into a contract with Thomas Howe, one of said lessees, whereby it again leased to him all that part of said road lying between Canyon City and Snake River for another period of years, giving him the right and priv-
129 ilege of collecting and receiving for his own use all the tolls to be received thereon. That in consideration thereof said Howe agreed to construct to and keep in repair that portion of said road, as required by law; and further agreed to allow all troops, property, and mails of the United States to pass over said road free from tolls or other charges. That said Thomas Howe, the lessee of The Dalles Military Road Company, did open, construct, and keep in repair that portion of said road lying east of Canyon City until long after the time when the governor of Oregon certified that said road was constructed as required by the said act of Congress approved February 25, 1867.

That in March, 1869, The Dalles Military Road Company purchased from one Thomas Gordon the bridge across Des Chutes River, known as the Gordon bridge, in consideration of fifteen hundred dollars ($1,500); that said bridge was about four or five miles above the mouth of said Des Chutes River, and was one of the best if not the very best crossings of that stream. That The Dalles Military Road Company made that bridge and

the approaches to it a part of its road. and put in good order and condition the said approaches leading to the bridge on both sides of said river so as to permit of its regular use as a wagon road. That The Dalles Military Road Company then had a continuous road from Dalles City on the Columbia River to Fort Boise on Snake River, over which teams of eight or ten horses or mules, or five yoke of oxen, could and did pass the entire length of said road from The Dalles to Snake River, hauling as much as five tons of freight at a load. That it was constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road.

And these defendants deny that when the governor of Oregon issued the said certificate declaring that said road had been constructed in accordance with the act of Congress approved February 25, 1867, he knew that it was not true.

And defendants deny the allegation in paragraph VI of the bill of complaint that Geo. L. Woods, governor of Oregon, did not make a careful or any examination of any road constructed or owned by The Dalles Military Road Company, and on the contrary these defendants say that said governor well knew from a partial examination made by him, and by good and sufficient proof from reliable persons examined by him, that the said road was constructed in all respects as required by the act of Congress approved February 25, 1867.

In answer to paragraph VII of the said bill, these defendants say the said certificate was not procured by The Dalles Military Road Company through or by any false or fraudulent representations made by the said officers, stockholders, agents, or by any other person or persons in order to enable it to falsely or fraudulently obtain possession or control said lands lying within the limits of said grant; and deny that the acceptance by the governor of Oregon of said road belonging to The Dalles Military Road Company was a fraud upon the United States; and on the contrary they say that said road was constructed according to law, and was fairly accepted by the governor of Oregon as before stated.

In answer to paragraph VIII of said bill these defendants say that said road was constructed in whole throughout its entire length with such width, gradation, and bridges as to permit of its regular use as a wagon road, and so as to be a public highway, and permit the transportation of property, troops, and mails of the United States over the same; and defendant alleges that it was so used when said road was accepted by the governor of Oregon as a road completed according to the act of Congress approved February 25, 1867.

In answer to paragraph IX of said bill these defendants say that in the construction of said road there was expended by The Dalles Military Road Company, and by its predecessor and assignor The Dalles and Boise Road Company, and by persons who constructed that portion of the same between Dalles City and Cross Hollows, and which was purchased from Thomas Gordon, as before stated, in all about eighty thousand dollars ($80,000); and that the lands granted to The Dalles Military Road Company in pursuance of the said act of Congress to aid in the construction of said road were applied to the re-imbursement of the moneys so expended in the construction of said road.

In answer to paragraph X of said bill these defendants say that the lands granted by the said act of Congress were disposed of for the purpose

of re-imbursing The Dalles Military Road Company and its stockholders for the money expended in the construction of said road, as hereinbefore stated.

In answer to paragraph XI of said bill these defendants say the allegations therein contained are true.

In answer to paragraph XII of said bill these defendants say it is true that patents for a portion of the lands included in the grant made by said act of Congress were issued to The Dalles Military Road Company as alleged in the said bill, and it is believed that the number of acres specified in Exhibit A attached to the bill, to wit, 126,910$\frac{23}{100}$ acres, is correct. But these defendants deny that on the 19th day of June, 1876, or at any other time, the President of the United States, or any other officer of the Government of the United States, was deceived, misled, or im-
132 posed upon by any false or fraudulent certificate, as alleged in the bill, and that he was thereby induced to issue the said patents. And these defendants say the said patents were fairly and properly issued to The Dalles Military Road Company.

In answer to paragraph XIII of said bill these defendants admit that all the allegations therein contained are true.

In answer to paragraph XIV of said bill these defendants admit that all the allegations therein contained are true.

In answer to paragraph XV of said bill these defendants say that the same is not a correct statement of the length of said road. That the same was surveyed after its construction, to wit, between April 22 and May 17, 1869, by David P. Thompson, and the length of said road from the court-house in Dalles City to Fort Boise, on Snake River, was three hundred and thirty and one-half (330½) miles. This and the time when the said survey was commenced and ended appear by the certificate on the map of survey made by said D. P. Thompson. And this defendant denies that The Dalles Military Road Company inequitably claims the right to have a patent issued for all the lands embraced within said grant not already patented to it; but it does claim that patents should be issued to it for all of said land, because it is justly entitled to such patent.

In answer to paragraph XVI of said bill these defendants say that neither any one or more of the defendants in this suit had full knowledge or had any knowledge whatever that the road provided for by said act of Congress approved February 25, 1867, had not at any time been constructed as required by the said act of Congress and the act of the legislative assembly of the State of Oregon approved October 20, 1868, so as to be in any sense whatever
133 a public highway; or so that it could be used by the United States or by any of the citizens or residents thereof as a public highway, or so that the United States could transport its property, troops, or mails over the same. And they deny that they or any of them have full or any knowledge that no grades had been established; that no clearing had been done on any part thereof; no bridges built over any streams on the line thereof, and no cuts made and no turnouts constructed anywhere on the line of road by The Dalles Military Road Company. And they deny that they or any of them had full or any knowledge that said road was not begun nor completed within five (5) years from the dates of the passage of said act of Congress approved February 25, 1867, or that it had never

been constructed. And they deny that they or any of them well knew or knew at all that the statements made in the certificate of the governor of Oregon hereinbefore set forth were false, or that the governor did not, at any time whatever, examine the road referred to in his certificate, or that the said certificate had been procured by false or fraudulent representations, or that the patent aforesaid was found to be issued upon said false and fraudulently procured certificate or upon any false certificate. And defendants, further answering, say that said road of The Dalles Military Road Company was constructed over its entire length with such width, gradation, and bridges as to permit of its regular use as a wagon road. That soon after its reorganization on March 9, 1868, The Dalles Military Road Company entered upon the work of completing portions of the said road which had been partially constructed by its predecessor, The Dalles and Boise Road Company, and constructing other portions of the same so as to facilitate travel thereon. That when the said road was examined and accepted by the governor of Oregon, as hereinbefore set forth, and certified by him
134 to be constructed in accordance with the act of Congress approved February 25, 1867, and for more than a year before that time large wagons loaded with from three to five tons of freight to each wagon, and drawn by three to five pair of horses or mules, and often by five or six yoke of oxen, would go from Dalles City to Canyon City, a distance of two hundred (200) miles. That in making these trips, as these teams frequently did, they would meet other similar teams returning from Canyon City, and pass them without difficulty or any unreasonable detention.

That all the goods, wares, and merchandise used and consumed in the mining camps in and around Canyon City and its vicinity were hauled over the said road from Cross Hollows to Canyon City. That the goods, wares, and merchandise used by the farmers and other settlers along the line of said road to Canyon City, and for thirty (30) miles beyond that town, were all transported on said road. That all the supplies used by the U. S. troops stationed at Camp Watson, Camp Harney, and Camp Logan, in Grant County (except such as were procured in the vicinity of said military posts), were hauled or packed over a great portion of said military road. That the United States mails were carried on said road from Cross Hollows to Canyon City in passenger coaches drawn by four horses, and made regular trips, sometimes twice and sometimes three times a week, and returned in the same day. And these defendants further say that from and after the time when The Dalles Military Road Company became entitled to the said grant of land by virtue of the act of the legislative assembly approved October 20, 1868, the said road has remained a public highway for the use of the Government of the United States, free from tolls or other charges upon the transpor-
135 tation of any and all property, troops, mails of the United States, and that no tolls were ever collected by The Dalles Military Road Company from the United States since the said 20th day of October, 1868.

And these defendants deny all and all manner of unlawful combination and confederacy with which they are charged in said bill, without this that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or be-

lief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf wrongfully sustained.

JAMES K. KELLY,
C. N. THORNBURY,
DALLES MILITARY ROAD CO.,
By JAMES K. KELLY,
Pres't.

Attest:

[SEAL OF THE D. M. R. CO.]

C. N. THORNBURY,
Secretary D. M. R Co.
JAMES K. KELLY &
A. L. FRAZER,
Solicitors for Defts..

STATE OF OREGON,
County of Wasco, ss:

The answer of the defendant, Dalles Military Road Company, was taken this 24th day of October, 1889, before me under the common seal of the said corporation, as by their said seal thereto attached appears.

B. S. HUNTINGTON,
Commissioner of the Circuit Court of the U. S. for the District of Oregon.

136 STATE OF OREGON,
County of Multnomah, ss:

James K. Kelly, one of the defendants' above named, being duly sworn on his oath, says that the matters and things set forth in the foregoing answer, so far as it relates to his own acts, are true, and so far as it relates to the acts of others, he believes them to be true.

JAMES K. KELLY.

Subscribed and sworn to before me this 23 day of October, 1889.

R. H. LAMSON,
Clerk.
By R. B. LAMSON,
Deputy Clerk.

137 STATE OF OREGON,
County of Wasco, ss:

C. N. Thornbury, one of the defendants above named, being duly sworn on his oath, says that the matters and things set forth in the foregoing answer, so far as it relates to his own acts, are true, and so far as it relates to the acts of others, he believes them to be true.

C. N. THORNBURY.

Subscribed and sworn to before me this 24th day of October, 1889.

B. S. HUNTINGTON,
Commissioner of the Circuit Court of the U. S. for the Dist. of Oregon.

(Endorsed:) Filed Oct. 25, 1889. R. H. Lamson, clerk.

138 And afterwards, to wit, on Tuesday, the 18th day of February, 1890, the same being the 87th judicial day of the regular October

term of said court; present, the honorable George M. Sabin, United States district judge of Nevada, presiding, the following proceedings were had in said case, to wit:

139 In the circuit court of the United States for the ninth judicial circuit, district of Oregon.

THE UNITED STATES
vs.
THE DALLES MILITARY ROAD COMPANY, ET AL. } No. 1612.

FEBRUARY 18, 1890.

This cause was heard upon the pleas of the defendants filed to the bill of complaint herein, and was argued by Mr. Lewis L. McArthur, United States attorney, and by Mr. James K. Kelley, of counsel for said defendants; on consideration whereof, it is now, here, ordered, adjudged, and decreed, that said pleas be and the same are hereby sustained, and that the said bill of complaint be and the same is hereby dismissed.

GEO. M. SABIN,
Judge.

140 And afterwards, to wit, on the 18th day of February, 1890, there was duly filed in said court, an opinion by the court, in words and figures as follows, to wit:

141 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES OF AMERICA,
vs.
THE DALLES MILITARY ROAD COMPANY, ET AL.

OPINION OF THE COURT.

TUESDAY, *February* 18, 1890.

This is a bill in equity, filed by the Attorney-General of the United States in pursuance of the act of Congress of March 2, 1889 (25 Stat., 850), to procure a decree of forfeiture of all lands granted by the act of Congress of February 25, 1867, to the State of Oregon, to aid in the construction of a military road from Dalles City, on the Columbia, to Fort Boise, on the Snake River, found in 14 Stat., 409, on the ground that the terms of the grant had not been complied with. It also seeks a cancellation of all patents therefor, issued by the United States under the act, and all conveyances to purchasers under said patents, and under the act, as well as a forfeiture of the lands still unpatented.

The bill alleges, in substance, that the road, in aid of which the grant was made, was never constructed in whole or in part; that through the fraudulent representations of the officers, stockholders, and agents of the corporation, the governor of Oregon was deceived and induced to issue a certificate in pursuance of the provisions of the act, declaring that he had examined the road throughout its entire length, and that it had been constructed and completed in all respects in accordance with the statute; and

that, relying upon this certificate, the patents to portions of the lands had been issued by the United States. The State of Oregon, by an act passed October 20, 1868, granted the same lands to the defendant, The Dalles Military Road Company, for the same purpose and upon the same terms as prescribed in said act of Congress. (Stat. Or. 1868, 3). After the road was claimed to have been completed in accordance with the provisions of said several acts, and after the governor of Oregon had certified to the completion, as provided in the acts, and the road had been accepted, and patents to portions of the lands issued, the said Dalles Military Road Company conveyed the lands, for a large consideration, to one Edward Martin, and by sundry mesne conveyances from him the title became vested in the defendant, The Eastern Oregon Land Company.

The defendants, by leave of the court first obtained, filed two pleas to the bill, supported by an answer, under oath, denying the fraud alleged in the unverified bill, as prescribed by equity rule 32.

The first alleges "That George L. Woods, then the governor of Oregon, without any false or fraudulent representations having at any time been made to him by the officers, stockholder, or agents of The Dalles Military Road Company, or any other person or persons, in its or their interest, and without any one or more of them having falsely or fraudulently induced him to certify that the road of said company was constructed in accordance with law, and without any fraud whatever on his part, on January 28, 1869, made a certificate, which certificate is in the words following: 'I, George L. Woods, governor of the State of Oregon, do hereby certify that this plat or map of The Dalles Military Road has been duly filed in my office by The Dalles Military Road Company, and shows in connection with the public surveys, as far as said public surveys are completed, the location of the line of route as actually surveyed, and upon which their road is constructed in accordance with the requirements of an act of Congress approved February 25, 1867, entitled, 'An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on Snake River,' and with the act of the legislative assembly of the State of Oregon, approved October 20, 1868, entitled 'An act donating certain lands to Dalles Military Road Company.' I further certify that I have made a careful examination of said road since its completion, and that the same is built in all respects as required by said above-recited acts, and that said road is accepted"; that afterwards, on May 31, 1876, The Dalles Military Road Company, for a valuable consideration, to wit, the sum of $125,000, to it paid by Edward Martin, sold and conveyed all the said lands belonging to it to said Martin, his heirs and assigns, and that by sundry mesne conveyances from said Martin to the Eastern Oregon Land Company, one of the defendants, the title to all said lands became and now is vested in said defendant, the Eastern Oregon Land Company."

The second plea sets out the same facts as stated in the first, and the further facts that on December 18, 1869, after making of said certificate by the governor of Oregon, the Commissioner of the General Land Office withdrew from sale the odd-numbered sections within three miles on each side of the said road in favor of The Dalles Military Road Company; that Congress afterwards, on June 18, 1874, passed an act entitled "An act to authorize the issuance of patents for lands granted to the State of

Oregon in certain cases," which, after reciting that Congress had granted the State of Oregon certain lands to aid in the construction of certain military wagon roads in said State," and that there exists no law providing for issuing formal patents for said lands," provided "That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall, by public acts, have transferred its interests in said lands to any corporation or corporations, in which case patents shall issue from the General Land Office to such corporation or corporations upon payment of the necessary expenses thereof: Provided, That this shall not be construed to revive any land grant already expired, nor to create any new rights of any kind, except to provide for issuing patents for land to which the State is already entitled;" that Edward Martin, a resident of the State of California, placing confidence in the truth of the said certificate of the governor of Oregon, dated June 23, 1869, that the said road had been duly constructed according to the requirements of said act of Congress approved February 25, 1867, and placing confidence in the order of the Commissioner of the General Land Office, dated December 28, 1869, withdrawing said lands from sale in favor of The Dalles Military Road Company, and believing that said act of Congress, approved June 18, 1874, would be carried into effect by the issue of patents to The Dalles Military Road Company for all said lands, did, on the 31st day of May, 1876, purchase in good faith, for a valuable consideration, to wit, the sum of $125,000 then paid by the said Martin to said Dalles Military Road Company, except such portions of it as had been previously sold by it; that previous to the time of paying said sum of $125,000, purchase money, and receiving said deed, the said Edward Martin had no notice of any failure on the part of The Dalles Military Road Company to construct and complete the said road in accordance with the requirements of said act of Congress, approved February 25, 1867, and had no reason to believe that the same was not constructed in accordance with the said act of Congress, but, on the contrary, he was informed and believed that said road had been constructed, with width, gradation, and bridges, as to permit of its regular use as a wagon road; that thereupon said Martin became and was the bona fide purchaser of all said lands for a valuable consideration, and they were duly conveyed to him by said corporation; and that by mesne conveyances all of said lands have been conveyed to defendant, The Eastern Oregon Land Company, with like good faith, and for a valuable consideration, and they are now held by said defendant, The Eastern Oregon Land Company.

The pleas having been set down for argument by the complainant for insufficiency, all the material allegations must be taken as true for the purposes of this decision.

In my opinion both pleas are good. The provisions of the act of Congress making the grant are as follows: "That there be, and hereby is, granted to the State of Oregon, to aid in the construction of a military wagon road . . . alternate sections of public lands designated by odd numbers to the extent of three sections in width on each side of the road."—Sec. 1. Section 2 provides "That the lands hereby granted to the said State

shall be disposed of by the legislature thereof for the purpose aforesaid, and for no other." Section 5 provides "That when the governor of said State shall certify to the Secretary of the Interior that ten continuous miles of said road are completed, then a quantity of the land hereby granted, not to exceed thirty sections, may be sold; and so on from time to time till said road shall be completed." The State of Oregon, by an act passed October 20, 1868, granted the lands so granted to the State to The Dalles Military Road Company, upon the same conditions as in the grant to the State, the act of Congress being recited verbatim, in full, in the preamble to the act of the State.

The grant to the State, by the words "there be, and hereby is, granted to the State of Oregon," was a grant in presenti, passing a present title to the State, to be defeated only by breach of conditions subsequent, as has been repeatedly held by the Supreme Court of the United States. (Schulenberg vs. Harriman, 21 Wal., 44; L. R'y Co. vs. K. P. R. Co., 92 U. S., 741; M. & C. R. Co. vs. K. P. R. Co., 97 U. S., 491; Wright vs. Roseberg, 121 U. S., 500; Van Wyck vs. Knevals, 106 U. S., 360; S. P. R. Co. vs. Orton, 6 Saw., 198; Francoeur vs. Newhouse, 40 Fed. Rep.,——.) The State act in like terms passed the present title, subject only to be defeated by breach of condition subsequent, to The Dalles Military Wagon Road Company. The act of Congress also designated the party, officer, or tribunal that should finally determine the question of fact, whether the road had been completed in accordance with the provisions of the statutory grant. Thirty sections were authorized to be sold "when the governor of said State shall certify to the Secretary of the Interior that any ten continuous miles of said road are completed, and so on from time to time until said road is completed." None appears to have been sold until the whole road was certified by the governor of Oregon, who alone was designated and authorized by the act of Congress to finally determine the matter, to have been fully completed in accordance with the requisites of the Congressional grant. That the certificate was not made on completion of each section of ten miles of the road can make no difference. It is sufficient that it was made at one time, covering the completion of the whole road. The making of the certificate, on the completion of each ten miles, was authorized for the convenience and benefit of the grantee, and not of the United States. The intent of the Government was to obtain the completion of the whole road. And that being completed, its object was fully attained. The authority to determine whether the road was completed was vested solely in the governor of Oregon, from whose decision there was no appeal. He was the agent of the United States, with full authority
142 to determine the question. And his certificate of completion was to be the evidence, and the only evidence under the provisions of the statutes, that the corporation has fully performed its part of the contract. His decision, therefore, in the absence of any such fraud as would vitiate it, is, necessarily, final and conclusive; and the Government is estopped from denying its finality. This principle was established in Reichert vs. Felps, 6 Wal. 160, and U. S. vs. Spee, 8 Wal., 83. When a special tribunal is authorized to hear and determine certain matters arising in the course of its duties, its decisions within the scope of its authority are conclusive. (Johnson vs. Towsley, 13 Wal., 72.) And the same principle has been announced in numerous cases since. The right to a patent once vested is equivalent, as

respects the Government dealing with the public lands, to a patent issued. (Stark vs. Sarrs, 6 Wal., 402.) Now in this case the acts of Congress and the State of Oregon, and the certificate of the governor, are public records, and the certificate of the governor having been made that the road had been fully completed in all respects as required by the granting act, the title already vested by the grant in presenti became perfected and indefeasible upon the record in the absence of any such fraud as would defeat it. The verified plea supported by the answer avers that the certificate was made without fraud. The plea is, therefore, sufficient, and must be sustained.

The second plea, in addition to the matter stated in the first, alleges that the defendants are bona fide purchasers from The Dalles Military Wagon Road Company, without notice of any fraud or defect in the title, and that there can be no forfeiture as against them. In Col. Coal Company vs. the United States, a bill was filed to vacate several patents as having been obtained by fraud and perjury in cases wherein there had, in fact, been no actual settlement or improvement on the land, although the evidence showed that there had been, it was held that the defense of a bona fide purchaser, without notice, is perfect. (123 United States, 307.) It was also held that the burden of satisfactorily showing the fraud is on the complainant. So, in United States vs. Minor (12 Sawyer, 164), it was held that a purchaser of land in good faith, for a valuable consideration, from a patentee of the United States, without actual notice of any fraud affecting the bill, is entitled to rely upon the record; and that a patent, if valid upon its face, will not be vacated as to him, for matters dehors the record of which he has no knowledge. Said the court: "The patent, which is the final record of the title (Beard vs. Federy, 3 Wal., 491-92), was regular and valid on its face. The proper department of the Government had examined the case on the evidence presented, adjudged the right to be in Minor, and issued the patent accordingly in due form. The patent could not be assailed by matter dehors the record and resting in parol. Innocent parties were entitled to rely on the record." (Ib., 167). These observations are equally applicable to the present case. The two statutes, one of the United States and the other of Oregon; the certificate of the governor of Oregon, made in pursuance of the first-named statute; the act of 1874 authorizing the issue of the patents upon the governor's certificate as to the unpatented lands, and these, together with the withdrawal of the lands from sale by the Secretary and the patents so issued, as to all the lands patented, constitute the record, and upon this record purchasers were entitled to rely. The claim that purchasers could not rely upon this record, but that they must go over the road, and, at their peril, ascertain for themselves whether it had been completed in all parts in pursuance of the provisions of the statutory grant, is preposterous. The record shows upon its face that all conditions have been performed; that this has been so adjudged by the officer authorized to determine the fact, and the correctness of his determination is recognized by Congress in the act of 1879, directing patents to issue upon the certificates, and on that record the parties were entitled to rely. While innocent purchasers are thus protected upon undisputed equitable principles and authority, their rights are also expressly recognized and affirmed by the statute itself under which this suit is brought, which provides that the courts shall determine the ques-

tions, which they are authorized to consider in a manner "saving and preserving the rights of bona fide purchasers of either of said grants, or of any portion of said grants for a valuable consideration." (25 Stats. U. S., 851.) Thus the statute itself recognizes the rights of innocent purchasers, if they had been otherwise doubtful. It is plain, therefore, that the second plea is sufficient, and must be sustained.

The remaining question to be considered, and the only one presented upon which there is any room for doubt, is whether complainants should be permitted to reply to the pleas, or whether the bill should be dismissed. Upon the whole, after careful consideration, I think the bill should be dismissed. I think it in the highest degree probable that such would be the final result whichever course is pursued. If so, the expense and annoyance of a long litigation would be fruitless.

The governor of Oregon, upon whom alone was devolved the jurisdiction and duty to finally determine the fact as to the completion of the road, made his certificate on June 23, 1869, and thereby furnished record evidence of the complete and proper performance of all the conditions of the statutory grant, and that the title to lands granted had become perfect and indefeasible. He certifies that he makes the certificate after and upon a careful personal examination of the road since its completion. Certainly the public and subsequent purchasers were entitled to rely upon this careful, positive certificate of the party authorized, chosen, and designated to determine and certify the fact of completion.

Five years afterwards, on June 18, 1874, without any proceedings having been taken to declare a forfeiture of the grant for breach of condition subsequent, and without any complaint appearing to have been made that said certificate of the governor was false, and that said road had not been fully completed in all particulars, as was required by the granting act, and while the Government must have been all the time using the road for its various purposes, designated in the act, Congress passed another "Act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases," wherein, after reciting that "certain lands have heretofore by acts of Congress been granted to the State of Oregon to aid in the construction of certain military wagon roads in said State," it was provided "that in all cases when the roads, in aid of the construction of which said lands were granted, are shown by the certificate of the governor of the State of Oregon, as in said act provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall under said grants be selected and certified, unless the State of Oregon shall by public act have transferred its interests in said land to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon the payment of the necessary expenses thereof: Provided, That this shall not be construed to revive any land grant already expired, nor create any new rights of any kind, except to provide for issuing patents for lands to which the State is already entitled." (18 Stat., 80.) The State in this case had so transferred its interest to The Dalles Military Wagon Road Company. By this act Congress directed that patents shall issue, "in all cases," not when the roads have actually in fact been completed as required by law, but in all cases "when the roads * * *

are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed." Now, in this case, after waiting five years after the certificate of completion, made upon personal examination of the governor, having all the means of ascertaining whether it was false or true, Congress positively, in effect, affirmed its truth by this provision of the act. It determined the fact of the performance of the conditions of the grant by directing in terms patents to be issued "in all cases" when the certificate had been issued. The closing paragraph in the proviso would operate only upon any lapsed grant, if any there was, by failure to complete in the required time, or when the work was not all completed, and when no certificate had been issued, or when certificates for only a part had been made. But it necessarily recognizes that "in all cases" when the certificate of the governor had been issued the conditions have been performed and the grantee has become entitled to a patent. The statute, in effect, confirms by legislative act the judicial act of the governor in ascertaining and certifying the completion of the work. I know of no case where a legislative grant or act has been investigated and set aside by the courts on the ground that its passage had been secured by imposition or fraud upon the legislative body passing the law. In Tameling vs. United States it was held that the action of Congress confirming a private land claim in New Mexico is not subject to judicial review.

In the present case the road must necessarily have been used by the Government during these many years for those purposes which were of so urgent a character as to induce Congress to make the grant in aid of its construction, or else the failure to complete it in such manner that it could be so used must inevitably have come to the knowledge of the Government and Congress. With this knowledge necessarily had, the act of 1874 was deliberately passed.

Congress exercised its discretion upon such information as it had in requiring the issue of the patents upon these certificates of the governor, and that is the end of the matter. It is a legislative recognition and affirmation of the correctness of the certificate of the governor of Oregon. (See also Ryan vs. Carter, 93 U. S., 78.)

It seems to me also that the cause of suit ought to be regarded as stale, so as to render it inequitable under the circumstances of the case to prosecute it now within the established principles of equity jurisprudence. Fifteen years elapsed after the affirmative and confirmatory action of Congress in directing, in mandatory language, the issue of the patents to lands "in all cases" when the certificate of the governor had been made, and twenty years after the date of the certificates now claimed to have been fraudulently issued before the passage of the act authorizing the bringing of this suit. It is a well-known historical fact, familiar to every citizen of Oregon, that the governor himself, who made the certificate in this case, and the governors who made them in the following cases, are both dead, as well, doubtless, as many of the other parties to the transactions. At this day it would, doubtless, be difficult to establish by sufficient affirmative testimony any actual fraud, if any there was. Although statutes of limitations do not run against the United States, and would not be available in an action of law, it seems to me that the case is a proper one for the application of the

principle that it would be inequitable to enforce a stale claim, and that a court of equity would not on that ground now declare a forfeiture.

Had the land grant been made for the same purposes and upon the same conditions by a private citizen, and the subsequent action both of the grantee and grantor been precisely the same as in this case, there can be little doubt, I apprehend, that a court of equity, in view of all the circumstances, would, at this late day, refuse to decree a forfeiture and to restore the lands to the grantor for breach of the conditions subsequent, on the ground that it would be inequitable to enforce so stale a claim against parties who had subsequently purchased in full view of the affirmative public action, as well as the non-action of the grantor, and thereby had good reason
143 to suppose that all the conditions of the grant, whether in fact well performed or not, had been satisfactorily performed. (Bowman vs. Wathen, 1 How., 189; Platt vs. Vatter, 9 Pet., 416; Badger vs. Badger, 2 Wal., 93; Sullivan vs. Portland R. Co., 94 U. S., 811; Clarke vs. Boomers Ex., 18 Wal., 509.)

Whatever is inequitable as between man and man, in their dealings with each other, should also be deemed inequitable as between the United States and those with whom they condescend to deal under like circumstances; and I take it that the same decree is proper in this case that would have been proper had a private party been the grantor, and had he by both his positive affirmative action and his non-action, for so long a time, given purchasers from his grantee so good reason to believe that he was fully satisfied with the performance of the conditions of the grant.

In my judgment, all subsequent purchasers were entitled to rely implicitly upon the certificate of the governor, who was alone authorized to determine the fact of the completion of the road, and especially after its confirmation by Congress in the act peremptorily requiring patents to issue in all cases where certificates had been in fact issued. If there were suspicious circumstances before the passage of this act which purchasers might be called upon to notice, the passage of this act assured them that Congress had informed itself of the action of the State and its grantees under it, and was satisfied as to the full performance of the work, or at least, if it found any defects or shortcomings, that they were waived and the work accepted. Martin purchased of The Dalles Company two years after the passage of the act of 1874, and was therefore a subsequent purchaser. Subsequent purchasers certainly had a right to rely upon the action had from time to time by Congress, and its agents duly authorized, and the public record of it so made. It is now estopped from alleging the non-fulfillment of the statutory conditions of the grant.

Let the bill be dismissed.

SAWYER, *Circuit Judge.*

(Endorsed:) Filed Feb'y 18, 1890. R. H. Lamson, Clerk.

144 And afterwards, to wit, on Friday, the 21st day of February, 1890, the same being the 90th judicial day of the regular October term of said court; present, the honorable George M. Sabin, United